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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 79-310)

Reproduced below is Presidential Proclamation 4694, which modifies the rates of duty on certain products.

Presidential Proclamation 4694 of September 29, 1979

STAGED REDUCTION OF RATES OF DUTY ON CERTAIN PRODUCTS TO CARRY OUT A TRADE AGREEMENT WITH ARGENTINA

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

1. I have determined, pursuant to section 101(a) of the Trade Act of 1974 (the Trade Act) (19 U.S.C. 2111(a)), that certain existing duties of the United States are unduly burdening and restricting the foreign trade of the United States and that one or more of the purposes of the Trade Act would be promoted by entering into the trade agreement with Argentina identified in the third recital of this proclamation.

2. Sections 131(a), 132, and 133 of the Trade Act (19 U.S.C. 2151(a), 2153, and 2154) and section 4(c) of Executive Order No. 11846 of March 27, 1975, have been complied with.

3. Pursuant to title I of the Trade Act (19 U.S.C. 2111 et seq.), I have, through my duly empowered representative, on August 10, 1979, entered into a trade agreement with Argentina, effective October 1, 1979, pursuant to which U.S. rates of duty on certain products would be modified as hereinafter proclaimed and as provided for in the annexes to this proclamation, in exchange for certain measures which will benefit U.S. interests.

4. In order to implement the trade agreement referred to in the third recital of this proclamation it is necessary to modify the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202) as provided

for in the annexes to this proclamation, attached hereto and made a part hereof.

5. Pursuant to the Trade Act, I determine that the modifications or continuance of existing duties hereinafter proclaimed are required or appropriate to carry out the trade agreement identified in the third recital of this proclamation.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes, including sections 101, 105, 109, and 604 of the Trade Act (19 U.S.C. 2111, 2115, 2119, and 2483), do proclaim that—

(1) Part 2B and part 5A of schedule 1 of the TSUS are modified as provided in annexes I and II to this proclamation.

(2) Each of the modifications to the TSUS made by this proclamation shall be effective as to articles entered, or withdrawn from warehouse, for consumption on or after October 1, 1979.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of September, in the year of our Lord, nineteen hundred and seventy-nine and of the Independence of the United States of America the two hundred and fourth.

JIMMY CARTER.

[Published in the Federal Register, October 2, 1979 (44 F.R. 56671)]

ANNEX I

Notes

1. A rate of duty specifically set forth in this annex which does not reflect a concession granted in the trade agreement with Argentina is enclosed in brackets. Additional bracketed matter is included to assist in the understanding of proclaimed modifications.

2. The items and superior descriptions in this annex are set forth in columnar form, and material in such columns is inserted in the columns designated, "Item," "Articles," "Rates of Duty 1," and "Rates of Duty 2," respectively, in the TSUS.

Subject to the above notes and to the insertion, as indicated herein, of the appropriate rates of duty set forth in annex II to this proclamation, the TSUS are modified as follows:

Part 5A of schedule 1 of the TSUS is modified by redesignating item 121.60 as "121.64" and by deleting item 121.59 and substituting the following new items in lieu thereof:

(Leather . . .:)				
	(Other:)			
		(Other:)		
			(Not . . .:)	
				"Other:

121.61	Bovine	(See Annex II) (25% ad val.)
121.63	Other	(5% ad val.) (25% ad val.)"

ANNEX II

Staged-rate Modifications of the Tariff Schedules of the United States

Each rate in the following table, for an item in the Tariff Schedules of the United States (TSUS) identified therein, is inserted in column No. 1 in such item, effective for articles provided for therein which are entered, or withdrawn from warehouse, for consumption on and after the date at the head of the column in which such rate is set forth and, except for rates in the final column, such rate shall be superseded by the rate for that item in the immediately following column, effective for articles which are entered, or withdrawn from warehouse, for consumption on and after the date at the head of such latter column:

Item in TSUS as modified by annex I	Rates of duty, effective on and after October 1, —		
	1979	1980	1981
107.48	4.5 percent ad val.	3 percent ad val.	3 percent ad val.
121.61	2 percent ad val.	1 percent ad val.	Free.

(T.D. 79-311)

Bonds

Approval of carrier bond, Customs form 3587

A bond of a carrier for the transportation of bonded merchandise has been approved as shown below. The approval of the bond is for a period of 90 days pending receipt of a permanent ICC certificate.

Dated: December 4, 1979.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Port Carriers Inc., 1314 East Port Rd., Jacksonville, FL; motor carrier; St. Paul Fire & Marine Ins. Co.	Nov. 21, 1979	Nov. 21, 1979	Tampa, FL; $25,000

BON-3-03

DONALD W. LEWIS,
Director, Office of Regulations and Rulings.

(T.D. 79-312)

Bonds

Approval and discontinuance of bonds on Customs form 7587 for the control of instruments of international traffic of a kind specified in section 10.41a of the Customs Regulations

Bonds on Customs form 7587 for the control of instruments of international traffic of a kind specified in section 10.41a of the Customs Regulations have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by the figures in parentheses immediately following which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: December 4, 1979.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
American Oceanic Shipping Corp. of Texas, 609 Fannin St., Houston, TX; St. Paul Fire & Marine Ins. Co.	Oct. 4, 1979	Oct. 5, 1979	Houston, TX; $10,000
Amoco Chemicals Corp., 200 East Randolph Dr., Chicago, IL; Seaboard Surety Co. (PB 10/6/78) D 11/20/79	Nov. 11, 1979	Nov. 12, 1979	Mobile, AL; $10,000
B. R. Anderson & Co., 1000 Second Ave., Room 800, Seattle, WA; Investors Ins. Co. of America	Sept. 24, 1979	Oct. 4, 1979	Seattle, WA; $10,000
Anitex Corp., 201 E. 42nd St., New York, NY; Peerless Ins. Co. D 11/19/79	Nov. 19, 1976	Nov. 22, 1976	New York Seaport; $10,000
Atlantic Richfield Co., 260 S. Broad St., Philadelphia, PA; Washington International Ins. Co.	Nov. 7, 1979	Nov. 9, 1979	Houston, TX; $10,000
Barber Steamship Lines Inc., 17 Battery Place, New York, NY; American Motorists Ins. Co. (PB 4/13/76) D 11/6/79 [1]	Nov. 6, 1979	Nov. 13, 1979	New York Seaport; $10,000
Cooper Shipping Co., Inc., P. O. Box 3025, Mobile, AL; Fidelity and Deposit Company of Maryland	Oct. 31, 1979	Nov. 19, 1979	Norfolk, VA; $10,000
Dixie Yarns, Inc. 1100 Watkins St., Chattanooga, TN; American Motorists Insurance Co.	Nov. 5, 1979	Nov. 6, 1979	New Orleans, LA; $10,000
Eurotainer U.S. Inc., 1 Broadway, New York, NY; Investors Insurance Company of America	Oct. 10, 1979	Oct. 11, 1979	New York Seaport; $10,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Fike Chemicals, Inc., 19th St., Nitro, WV; The Aetna Casualty and Surety Co. D 10/22/79	Oct. 22, 1974	Nov. 20, 1974	New York Seaport; $10,000
The Goodyear Tire and Rubber Co., 1144 East Market St., Akron, OH; Federal Ins. Co. D 11/26/79	Aug. 18, 1976	Feb. 11, 1977	Norfolk, VA; $10,000
Harbor Net & Twine Co., 1010 J. Street, Hoquim, WA; Washington International Insurance Co.	Sept. 7, 1979	Oct. 4, 1979	Seattle, WA; $10,000
Hartog Foods International Inc., 515 Madison Ave., New York, NY; Old Republic Ins. Co.	Sept. 28, 1979	Oct. 3, 1979	Seattle, WA; $10,000
Fred Imbert Inc., Fernandez Juncos Ave., Exide Bldg., 2nd floor, San Juan, PR; The Home Insurance Co. (PB 10/15/76) D 10/4/79 [2]	Sept. 26, 1979	Oct. 5, 1979	San Juan, PR; $10,000
P.I.S.A. Inc., 2808 ITM Bldg., 2 Canal St., New Orleans, LA; St. Paul Fire & Marine Ins. Co. D 11/8/79	Nov. 28, 1978	Nov. 29, 1978	New Orleans, LA $10,000
San Juan Mercantile Corp., P.O. Box 4352, San Juan, PR;.St. Paul Fire & Marine Ins. Co.	Oct. 4, 1979	Oct. 4, 1979	San Juan, PR $10,000
Scheuer Associates Inc., 270 Madison Ave., New York, NY; St. Paul Fire & Marine Ins. Co. D 12/13/79	Dec. 13, 1965	Dec. 28, 1965	New York Seaport $10, 000
Standard Coosa Thatcher Co., Box 791, Chattanooga, TN; American Motorists Ins. Co.	Nov. 5, 1979	Nov. 6, 1979	New Orleans, LA; $10,000
Welding & Cutting Equipment Co., 855 Raymond Blvd., Newark, NJ; American Motorists Ins. Co.	Oct. 16, 1979	Oct. 16, 1979	New York Seaport; $10,000

[1] Surety is Federal Insurance Co.
[2] Surety is Peerless Ins. Co.

BON-3-10

DONALD W. LEWIS,
Director, Office of Regulations and Rulings.

(T.D. 79-313)

Cotton and Manmade Fiber Textile Products—Restriction on Entry

Restriction on entry of cotton and manmade fiber textile products manufactured or produced in Singapore

There is published below a directive of November 1, 1979, received by the Commissioner of Customs from the acting chairman, Committee for the Implementation of Textile Agreements, concerning

restriction on entry of cotton and manmade fiber textile products in categories 315, 331, 613, and 641 manufactured or produced in Singapore. This directive further amends, but does not cancel, that committee's directive of December 28, 1978 (T.D. 79–40).

This directive was published in the Federal Register on November 7, 1979 (44 F.R. 64482), by the committee.

(QUO–2–1)

Dated: December 6, 1979.

WILLIAM D. SLYNE
(For G. Scott Shreve, Acting
Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
INDUSTRY AND TRADE ADMINISTRATION,
Washington, D.C., November 1, 1979.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229.

DEAR MR. COMMISSIONER: This directive further amends, but does not cancel, the directive issued to you on December 28, 1978, by the chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and manmade fiber textile products, produced or manufactured in Singapore.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 21 and 22, 1978; between the Governments of the United States and the Republic of Singapore, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 5, 1977, you are directed to prohibit, effective on November 7, 1979, and for the 12-month period beginning on January 1, 1979, and extending through December 31, 1979, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and manmade fiber textile products in categories 315, 331, 613, and 641, produced or manufactured in Singapore, in excess of the following levels of restraint:

Category	*Adjusted 12-month level of restraint*[1]	
315	596,362	square yards
331	221,429	dozen pairs
613	2,863,644	square yards
641	76,403	dozen

Textile products in categories 331 and 613 which have been exported to the United States prior to January 1, 1979, shall not be subject to this directive.

Textile products in categories 331 and 613 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a) (1) (A) prior to the effective date of this directive shall not be denied entry under this directive.

A detailed description of the textile categories in terms of TSUSA numbers was published in the Federal Register on January 4, 1978 (43 F.R. 884), as amended on January 25, 1978 (43 F.R. 3421), March 3, 1978 (43 F.R. 8828), June 22, 1978 (43 F.R. 26773), September 5, 1978 (43 F.R. 39408), January 25, 1979 (44 F.R. 94), March 22, 1979 (44 F.R. 17545), and April 12, 1979 (44 F.R. 21843).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Republic of Singapore and with respect to imports of cotton and manmade fiber textile products from Singapore have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

PAUL T. O'DAY,
Acting Chairman, Committee for the Implementation of Textile Agreements.

(T.D. 79-314)

Cotton and Wool Textile Products—Restriction on Entry

Restriction on entry of cotton and wool textile products manufactured or produced in Singapore

There is published below a directive of November 21, 1979, received

[1] The levels of restraint have not been adjusted to reflect any imports after Dec. 31, 1978. Imports in categories 331 and 613 during the January-August 1979 period have amounted to 147,292 dozen pairs and 2,037,156 square yards, respectively.

by the Commissioner of Customs from the acting chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of cotton and wool textile products in various categories manufactured or produced in Singapore. This directive amends, but does not cancel, that committee directive of December 28, 1978 (T.D. 79–40).

This directive was published in the Federal Register on November 27, 1979 (44 F.R. 67700), by the committee.

(QUO–2–1)

Dated: December 6, 1979.

WILLIAM D. SLYNE
(For G. Scott Shreve, Acting
Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
INDUSTRY AND TRADE ADMINISTRATION,
Washington, D.C., November 21, 1979.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229.

DEAR MR. COMMISSIONER: This directive further amends, but does not cancel, the directive of December 28, 1978, from the chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and manmade fiber textile products, produced or manufactured in Singapore.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1972, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 21 and 22, 1978, as amended, between the Governments of the United States and the Republic of Singapore; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on November 27, 1979, and for the 12-month period beginning on January 1, 1979, and extending through December 31, 1979, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in categories 320, 341, 347/348, and 445/446, produced or manufactured in Singapore, in excess of the following adjusted levels of restraint:

Category	*Adjusted 12-month level of restraint* [1]	
320	7,833,520	square yards
341	53,377	dozen
347/348	567,088	dozen of which not more than 510,936 dozen shall be in category 347 and not more than 217,971 dozen shall be in category 348
445/446	14,899	dozen

The actions taken with respect to the Government of the Republic of Singapore and with respect to imports of cotton and wool textile products from Singapore have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

PAUL T. O'DAY,
Acting Chairman, Committee for the Implementation of Textile Agreements.

(T.D. 79-315)

Cotton and Wool Textile Products—Restriction on Entry

Restriction on entry of cotton and wool textile products manufactured or produced in Romania

There is published below a directive of November 5, 1979, received by the Commissioner of Customs from the acting chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of cotton and wool textile products in various categories manufactured or produced in Romania. This directive amends, but does not cancel, that committee's directive of December 28, 1978 (T.D. 79-47).

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[1] The levels of restraint have not been adjusted to reflect any imports after Dec. 31, 1978.

This directive was published in the Federal Register on November 8, 1979 (44 F.R. 64863), by the committee.

(QUO-2-1)

Dated: December 6, 1979.

WILLIAM D. SLYNE
(For G. Scott Shreve, Acting
Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
INDUSTRY AND TRADE ADMINISTRATION,
Washington, D.C., November 5, 1979.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229

DEAR MR. COMMISSIONER: To facilitate implementation of the Bilateral Cotton and Wool and Man-Made Fiber Textile Agreements between the Governments of the United States and the Socialist Republic of Romania, it would be appreciated if you would charge the following amounts to the indicated categories. These charges are for the period which began on January 1 and extended through September 30, 1979.

Category	*Amount to be charged*	
334 [1]	549	dozen
347	47,419	dozen
410	6,544	square yards

This letter will not be published in the Federal Register.

Sincerely,

EDWARD GOTTFRIED,
Acting Chairman, Committee for the
Implementation of Textile Agreements.

U.S. DEPARTMENT OF COMMERCE,
INDUSTRY AND TRADE ADMINISTRATION,
Washington, D.C., November 5, 1979.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229.

DEAR MR. COMMISSIONER: This directive further amends, but does

[1] In category 334, all TSUSA numbers except TSUSA 380.0611.

not cancel, the directive of December 28, 1978, from the chairman of the Committee for the Implementation of Textile Agreements which directed you to prohibit, for the 12-month period beginning on January 1, 1979, and extending through December 31, 1979, entry into the United States for consumption and withdrawal from warehouse for consumption of certain cotton textile products, produced or manufactured in Romania.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton Textile Agreement of January 6 and 25, 1978, as amended, and the Bilateral Wool and Man-Made Fiber Textile Agreement of June 17, 1977, as amended, between the Governments of the United States and the Socialist Republic of Romania; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on November 8, 1979 and for the 12-month period beginning on January 1, 1979, and extending through December 31, 1979, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in the following categories in excess of the indicated levels of restraint:

Category	*12-month level of restraint* [1]
334	257,153 dozen of which not more than 36,320 dozen shall be in all TSUSA numbers in the category except TSUSA 380.0611
338	256,000 dozen of which not more than 97,222 dozen shall be in TS USA Nos. 380.0028, 380.0029, 380.0651, and 380.0652
347	167,282 dozen
410	150,000 square yards

Textile products in categories 347 and 410 which have been exported to the United States before January 1, 1979, shall not be subject to this directive.

Textile products in categories 347 and 410 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The actions taken with respect to the Government of the Socialist Republic of Romania and with respect to imports of cotton and wool textile products from Romania have been determined by the Com-

[1] The levels of restraint have not been adjusted to reflect any imports after Dec. 31, 1978.

mittee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

EDWARD GOTTFRIED,
Acting Chairman, Committee for the Implementation of Textile Agreements.

(T.D. 79-316)

Cotton and Manmade Fiber Textile Products—Restriction on Entry

Restriction on entry of cotton and manmade fiber textile products manufactured or produced in Malaysia

There is published below a directive of October 26, 1979, received by the Commissioner of Customs from the acting chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of cotton and manmade fiber textile products in categories 339 and 638/639, manufactured or produced in Malaysia. This directive amends, but does not cancel, that committee's directive of December 27, 1978 (T.D. 79-49).

This directive was published in the Federal Register on October 31, 1979 (44 F.R. 62554), by the committee.

(QUO-2-1)

Dated: December 6, 1979.

WILLIAM D. SLYNE
(For G. Scott Shreve, Acting
Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
INDUSTRY AND TRADE ADMINISTRATION,
Washington, D.C., October 26, 1979.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229.

DEAR MR. COMMISSIONER: This directive further amends, but does not cancel, the directive issued to you on December 27, 1978, by the

chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and manmade fiber textile products, produced or manufactured in Malaysia.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 17 and June 8, 1978; and in accordance with the provisions of Executive Order 11651 of March 3, 1971, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on November 1, 1979, and for the 12-month period beginning on January 1, 1979, and extending through December 31, 1979, entry into the United States for consumption and withdrawal from warehouse for consumption of manmade fiber textile products in category 638/639, produced or manufactured in Malaysia, in excess of the following restraint:

Category	*Amended 12-month level of restraint* [1]
638/639	131,466 dozen of which not more than 86,784 dozen shall be in category 639
339	128,889 dozen

The action taken with respect to the Government of Malaysia and with respect to imports of manmade fiber textile products from Malaysia has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

PAUL T. O'DAY,
Acting Chairman, Committee for the Implementation of Textile Agreements.

(T.D. 79-317)

Cotton and Manmade Fiber Textile Products—Restriction on Entry

Restriction on entry of cotton and manmade fiber textile products manufactured or produced in Thailand

There is published below a directive of November 1, 1979, received

[1] The levels of restraint have not been adjusted to reflect any imports after Dec. 31, 1978.

by the Commissioner of Customs from the Acting Chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of cotton and manmade fiber textile products in categories 320, 639, and 641 manufactured or produced in Thailand. This directive further amends, but does not cancel, that committee's directives of December 27, 1978, and June 28, 1979 (T.D. 79–43 and T.D. 79–208), respectively.

This directive was published in the Federal Register on November 7, 1979 (44 F.R. 64483), by the committee.

(QUO–2–1)

Dated: December 6, 1979.

WILLIAM D. SLYNE
(For G. Scott Shreve, Acting
Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
THE ASSISTANT SECRETARY FOR INDUSTRY AND TRADE,
Washington, D.C., November 1, 1979.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229.

DEAR MR. COMMISSIONER: This directive further amends, but does not cancel, the directives issued to you on December 27, 1978, and June 28, 1979, by the chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and manmade fiber textile products, produced or manufactured in Thailand.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 4, 1978, as amended, between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on November 2, 1979, and for the 12-month period beginning on January 1, 1979, and extending through December 31, 1979, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-

made fiber textile products in categories 320, 639, and 641 in excess of the following amended levels of restraint:

Category	*Amended 12-month level of restraint* [1]	
320	7, 920, 865	square yards
639	1, 042, 485	dozen
641	129, 645	dozen

The actions taken with respect to the Government of Thailand and with respect to imports of cotton and manmade fiber textile products from Thailand have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, which are necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

PAUL T. O'DAY,
Acting Chairman, Committee for the Implementation of Textile Agreements.

(T.D. 79-318)

Manmade Fiber Textile Products—Restriction on Entry

Restriction on entry of manmade fiber textile products manufactured or produced in the Philippines

There is published below a directive of October 12, 1979, received by the Commissioner of Customs from the acting chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of manmade fiber textile products in categories 645 and 646 (pt.) manufactured or produced in the Philippines.

This directive was published in the Federal Register on October 17, 1979 (44 F.R. 59930), by the committee.

(QUO-2-1)

Dated: December 6, 1979.

WILLIAM D. SLYNE
(For G. Scott Shreve Acting
Director, Duty Assessment Division).

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[1] The levels of restraint have not been adjusted to reflect any imports after Dec. 31, 1978.

U.S. DEPARTMENT OF COMMERCE,
INDUSTRY AND TRADE ADMINISTRATION,
Washington, D.C., October 12, 1979.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229.

DEAR MR. COMMISSIONER: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 11, 1978, as amended, between the Governments of the United States and the Republic of the Philippines, it would be appreciated if, effective on October 18, 1979, you would deduct 39,117 dozen from the charges made to the level of restraint established for category 645/646 part during the agreement period which began on January 1, 1979.

The action taken with respect to the Government of the Republic of the Philippines and with respect to imports of manmade fiber textile products from the Philippines has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, which are necessary to the implementation of such actions, fall within the foreign affairs exceptions to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

PAUL T. O'DAY,
Acting Chairman, Committee for the Implementation of Textile Agreements.

(T.D. 79-319)

Wool and Manmade Fiber Textile Products—Restriction on Entry

Restriction on entry of wool and manmade fiber textile products manufactured or produced in Poland

There is published below a directive on October 29, 1979, received by the Commissioner of Customs from the acting chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of wool and manmade fiber textile products in categories 443/643/644 manufactured or produced in Poland. This directive further amends, but does not cancel, that committee's directive of December 27, 1979 (T.D. 79-41).

This directive was published in the Federal Register on November 1, 1979 (44 F.R. 62928), by the committee.

(QUO-2-1)

Dated: December 6, 1979.

WILLIAM D. SLYNE
(For G. Scott Shreve, Acting
Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
INDUSTRY AND TRADE ADMINISTRATION,
Washington, D.C., October 29, 1979.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229.

DEAR MR. COMMISSIONER: On December 27, 1978, the chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry during the 12-month period beginning on January 1, 1979, and extending through December 31, 1979, of cotton, wool, and manmade fiber textile products in certain specified categories, produced or manufactured in Poland, in excess of designated levels of restraint. The chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 9 and 12, 1978, as amended, between the Governments of the United States and the Polish People's Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed, effective on November 2, 1979, to increase the 12-month level of restraint for category Order 11951 of January 6, 1977, you are directed, effective on November 2, 1979, to increase the 12-month level of restraint for category 443/643/644 to 14,367 dozen.[2]

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[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of Jan. 9 and 12, 1978, as amended, between the Governments of the United States and the Polish People's Republic which provide, in part, that: (1) Within the aggregate and applicable group limits of the agreement, specific levels of restraint may be exceeded by designated percentages; (2) these levels may also be increased for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[2] The level of restraint has not been adjusted to reflect any imports after Dec. 31, 1978.

The actions taken with respect to the Government of the Polish People's Republic and with respect to imports of wool and manmade fiber textile products from Poland have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

PAUL T. O'DAY,
Acting Chairman, Committee for the Implementation of Textile Agreements.

(T.D. 79–320)

Bonds

Approval and discontinuance of carrier bonds, Customs form 3587

Bonds of carriers for the transportation of bonded merchandise have been approved or discountinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: December 6, 1979.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Alto's Express, Inc., 2301 Garry Rd., Cinnaminson, NJ; motor carrier; United States Fire Ins. Co. (PB 3/23/79) D 7/23/79 [1]	July 23, 1979	Aug. 24, 1979	Philadelphia, PA; $50,000
J. T. Arnett Grain Co., P.O. Box 25, Corsicana, TX; motor carrier; Lawyers Surety Corp. (PB 8/14/68) D 11/7/79 [2]	Oct. 22, 1979	Nov. 13, 1979	Laredo, TX; $25,000
Associated Air Freight Inc., 3333 New Hyde Park Rd., New Hyde Park, NY; air freight forwarder; The Aetna Casualty & Surety Co.	Apr. 19, 1979	Nov. 13, 1979	New York Seaport; $50,000
Bestway Express, Inc., 905 Visco Dr., Nashville, TN; motor carrier; The American Ins. Co.	Oct. 23, 1979	Oct. 26, 1979	New Orleans, LA; $25,000

See footnotes at end of table.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Birdsall, Inc. (A FL Corp.), 821 Avenue E, Riviera Beach, FL; motor carrier; The Aetna Casualty & Surety Co.	Nov. 8, 1979	Nov. 13, 1979	Miami, FL; $50,000
Britton Motor Service, Inc., 740 Westminister St., St. Paul, MN; motor carrier; Reliance Ins. Co.	July 27, 1979	Nov. 21, 1979	Minneapolis, MN; $25,000
Canyon Distributors Ltd., 7032 Farrell Rd. SE; Calgary, Alberta, Canada; motor carrier; The Continental Ins. Co.	June 15, 1979	Nov. 15, 1979	Great Falls, MT; $25,000
Caretta Trucking Inc., 301 Mayhill St., Saddle Brook, NJ; motor carrier; Peerless Ins. Co. D 10/19/79	Oct. 17, 1975	Oct. 21, 1975	Newark, NJ; $50,000
Carriers Cartage Co., Inc., 3335 U.S. 27, South, P.O. Box 1021, Sebring, FL; motor carrier; St. Paul Fire & Marine Ins. Co.	Nov. 1, 1979	Nov. 1, 1979	Tampa, FL; $25,000
Circle Airfreight Corp., 545 Sansome St., San Francisco, CA; air carrier; Old Republic Ins. Co. (PB 10/10/74) D 11/12/79 [3]	Oct. 30, 1979	Nov. 20, 1979	San Francisco, CA; $100,000
Claxon Truck Line, Inc., 453 Versailles Rd., P. O. Box 678, Frankfort, KY; motor carrier; Ohio Farmers Ins. Co.	Nov. 6, 1979	Nov. 15, 1979	Cleveland, OH; $100,000
Clifton Trucking Corp., 3445 Paterson Plank Rd. North Bergen, NJ; motor carrier; Old Republic Ins. Co.	Oct. 27, 1979	Nov. 1, 1979	Newark, NJ; $50,000
Cunningham Distributing Corp., Great Falls, MT; motor carrier; St. Paul Fire & Marine Ins. Co.	Oct. 26, 1979	Oct. 26, 1979	Great Falls, MT; $25,000
Frank P. Dow Co., Inc., Olympic National Bldg., Seattle, WA; motor carrier; Massachusetts Bay Ins. Co. (PB 9/20/68) D 9/13/79 [4]	Aug. 8, 1979	Sept. 14, 1979	Los Angeles, CA; $50,000
Farruggio's Bristol, 1419 Radcliffe St., Bristol, PA; motor carrier; Reliance Insurance Co. D 10/5/79	Oct. 1, 1977	Oct. 6, 1977	Philadelphia, PA; $50,000
Florida East Coast Highway Dispatch, One Malaga St., St. Augustine, FL; motor carrier; Seaboard Surety Co. (PB 10/5/78) D 10/29/79	Oct. 5, 1979	Oct. 29, 1979	Tampa, FL; $25,000
Gateway Transportation, Inc., 455 Park Plaza Dr., LaCross, WI; motor carrier; Hartford Accident and Indemnity Co. (PB 1/1/68) D 12/1/79 [5]	July 12, 1979	Nov. 13, 1979	Milwaukee, WI; $25,000
Sam B. Haynes d/b/a Haynes Motor Line, 8475 Florida Blvd., Baton Rouge, LA; motor carrier; Hartford Accident & Indemnity Co.	Oct. 4, 1979	Oct. 5, 1979	New Orleans, LA; $25,000
J. D. Johnson d/b/a Houston Cartage, Inc., 12911 Breezeway, Houston, TX; motor carrier; St. Paul Fire & Marine Ins. Co.	June 1, 1979	Oct. 26, 1979	Houston, TX; $25,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
International Transport, Inc., 2450 Marion Rd. SE, Rochester, MN; motor carrier; American Motorists Ins. Co. (PB 6/25/73) D 11/21/79 [6]	Sept. 1, 1979	Nov. 21, 1979	Minneapolis, MN; $100,000
Lion Transfer & Storage Co., 663 Taylor St., N.W., Washington, D.C.; motor carrier; Fireman's Fund Insurance Co.	Oct. 29, 1979	Nov. 20, 1979	Washington, D.C.; $50,000
The Long Island Railroad Co., Jamaica Station, Jamaica, NY; rail carrier; Sentry Insurance Co. (PB 9/27/54) D 9/27/79 [7]	Sept. 27, 1979	Sept. 27, 1979	New York Seaport; $100,000
Massachusetts Trucking Corp., P.O. Box F-649, New Bedford, MA; motor carrier; Peerless Ins. Co. D 10/30/79	Mar. 16, 1967	Apr. 11, 1967	New York Seaport; $25,000
William McCullough Transportation Co., Inc., 1130 U.S. Highway No. 1, Elizabeth, NJ; motor carrier; Peerless Ins. Co. (PB 10/8/75) D 11/8/79 [8]	Nov. 8, 1979	Nov. 8, 1979	New York Seaport; $50,000
Northwestern Transfer Co., 215 S.E. Morrison St., Portland, OR; motor carrier; Millers Mutual Fire Insurance Co. D 11/19/79	Aug. 15, 1974	Aug. 26, 1974	Portland, OR; $25,000
Billie Cellum d/b/a Pat's Truck Brokerage, P.O. Box 687, Pharr, TX; motor carrier; American Employers Insurance Co. (PB 10/3/73) D 10/29/79 [9]	Oct. 19, 1979	Oct. 29, 1979	Laredo, TX; $25,000
Wayne Phillips, P.O. Box 648, Pharr, TX; motor carrier; Fidelity & Deposit Co. of MD	Nov. 1, 1979	Nov. 16, 1979	Laredo, TX; $25,000
Pinehurst Airlines, Inc., P.O. Box 911, Pinehurst, NC; air carrier; St. Paul Fire & Marine Ins. Co. D 10/16/79	July 6, 1977	Aug. 11, 1977	Chicago, IL; $50,000
Redwing Refrigerated, Inc., 9831 South Orange Ave., Taft, FL; motor carrier; The Aetna Casualty & Surety Co.	Sept. 13, 1979	Nov. 20, 1979	Tampa, FL; $25,000
Reliance Motor Express, Inc., 28 Fitchburg St., Somerville, MA; motor carrier; The Hanover Insurance Co. (PB 8/16/76) D 9/6/79 [10]	Sept. 5, 1979	Oct. 30, 1979	Boston, MA; $50,000
Sea Lane Express, Inc., 2 Longview Place, Great Neck, NY; motor carrier; Peerless Ins. Co.	Oct. 29, 1979	Oct. 29, 1979	New York Seaport; $25,000
Seatrain Lines, California, 1395 Middle Harbor Rd., Oakland, CA; water carrier; Peerless Insurance Co. D 10/15/79	Mar. 21, 1974	May 3, 1974	San Francisco, CA; $100,000
Floyd Smith Jr. Trucking Inc., Meridian, ID; motor carrier; Mid-Century Ins. Co.	Aug. 17, 1979	Oct. 17, 1979	Great Falls, MT; $25,000

See footnotes at end of table.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
South End Cartage Corporation of Delaware, 4222 S. Knox Ave., Chicago, IL; motor carrier; Transamerica Insurance Co.	Nov. 1, 1979	Nov. 13, 1979	Chicago, IL; $35,000
T.I.M.E.-D.C., Inc., 2598 74th St., Lubbock, TX; motor carrier; Lawyers Surety Corp. (PB 8/14/76) D 10/22/79 [11]	Aug. 10, 1979	Oct. 22, 1979	Laredo, TX; $25,000
United Transport Corp., 319 O'Brien Rd., Kearny, NJ; motor carrier; St. Paul Fire & Marine Insurance Co.	Sept. 10, 1979	Oct. 17, 1979	Newark, NJ; $50,000
Popelka Trucking Co., Inc., d/b/a THE WAGGONERS, Billings, MT; motor carrier; St. Paul Fire & Marine Insurance Co.	Oct. 23, 1979	Oct. 24, 1979	Great Falls, MT; $25,000
Walter & Sons Transportation, Inc., 141 Addison St., East Boston, MA; motor carrier; Washington International Ins. Co.	July 19, 1979	Oct. 19, 1979	Boston, MA; $25,000
Xpress Truck Lines, Inc., d/b/a XLT, Inc., 2500 E. Butler St., Philadelphia, PA; motor carrier; The American Insurance Co. (PB 4/12/79) D 10/29/79	Oct. 12, 1979	Oct. 29, 1979	Philadelphia, PA; $25,000

[1] Surety is The Ohio Casualty Ins. Co.
[2] Principal is Jesse Thomas Arnett. Surety is Fireman's Fund Ins. Co.
[3] Surety is Sentry Ins. a Mutual Co.
[4] Surety is St. Paul Fire & Marine Ins. Co.
[5] Principal is Gateway Transportation Co., Inc. Surety is Ins. Co. of North America
[6] Surety is Transport Indemnity Co.
[7] Surety is Federal Ins. Co.
[8] Surety is Seaboard Surety Co.
[9] Principal is Pat's Truck Brokerage. Surety is United States Fire Ins. Co.
[10] Surety is Peerless Ins. Co.
[11] Surety is Aetna Casualty & Surety Co.

BON-3-03

DONALD W. LEWIS,
Director, Office of Regulations and Rulings.

(T.D. 79-321)

Notice of Recordation of Trade Name

OHAUS SCALE CORP.

On October 25, 1979, there was published in the Federal Register (44 F.R. 61491) a notice of application for the recordation under section 42 of the act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name Ohaus Scale Corp. The notice advised that prior to final action on the application, filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), consideration would be

given to relevant data, views, or arguments submitted in opposition to the recordation and received not later than 30 days from the date of publication of the notice. No responses were received in opposition to the application.

The name "Ohaus Scale Corp." is hereby recorded as the trade name of Ohaus Scale Corp., a corporation organized under the laws of the State of New Jersey, located at 29 Hanover Road, Florham Park, N.J. 07932, when applied to weighing apparatus, including balances, scales, weights, and containers, and accessories for same, manufactured in the United States. No foreign company, parent, or subsidiary company is authorized to use the trade name.

Dated: December 7, 1979.

HARVEY B. FOX,
Acting Director, Office of Regulations and Rulings.

[Published in the Federal Register, December 13, 1979 (44 F.R. 72255)]

ERRATA

In CUSTOMS BULLETIN, volume 13, No. 46, dated November 14, 1979, in T.D. 79–281–C (Chrysler), on page 14, correct last line to read:

B, T.D. 55844–P, and T.D. 56549–B.

In CUSTOMS BULLETIN, volume 13, No. 46, dated November 14, 1979, in T.D. 79–281–Y, on page 20, correct third line to read:

Amends: T.D. 78–229–X and T.D. 78–470–Y, to cover successorship

U.S. Customs Service

General Notices

(19 CFR Part 6)

Air Commerce Regulations

Proposed amendment to the Customs Regulations relating to the applicability to aircraft of Customs laws and regulations applicable to vessels

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: Aircraft arriving from contiguous foreign territory currently are subject to Customs laws and regulations applicable to vehicles arriving from contiguous foreign territory. Aircraft arriving from any other (noncontiguous) foreign territory are subject to Customs laws and regulations applicable to vessels arriving from noncontiguous foreign territory. Because of this difference in treatment, aircraft arriving from contiguous foreign territory are not subject to the same administrative and enforcement provisions as aircraft arriving from noncontiguous foreign territory.

This document proposes to amend the Customs Regulations to provide that aircraft arriving from any foreign territory and the persons and merchandise, including baggage, carried on the aircraft shall be subject to the vessel laws and regulations enforced and administered by Customs.

DATES: Comments must be received on or before (60 days after publication in the Federal Register).

ADDRESS: Comments (preferably in triplicate) should be addressed to the Commissioner of Customs, attention: Regulations and Research Division, U.S. Customs Service, 1301 Constitution Avenue NW., room 2335, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Stuart P. Seidel, Office of the Chief Counsel, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202-566-5476.

SUPPLEMENTARY INFORMATION:

305-507—79——4

BACKGROUND

Section 6.10, Customs Regulations (19 CFR 6.10), currently differentiates between aircraft arriving from contiguous foreign territory and those arriving from any other (noncontiguous) foreign territory. Aircraft arriving from contiguous foreign territory are subject to the Customs laws and regulations applicable to vehicles arriving from contiguous foreign territory. Aircraft arriving from any other (noncontiguous) foreign territory are subject to the Customs laws and regulations applicable to vessels arriving from noncontiguous foreign territory.

Customs has determined that for purposes of entry, aircraft arriving from contiguous and noncontiguous foreign territory are in fact treated the same. However, because of the wording of section 6.10, aircraft arriving from contiguous foreign territory are not subject to the same administrative and enforcement provisions as aircraft arriving from noncontiguous foreign territory. For example, section 3 of the Anti-Smuggling Act of 1935 (19 U.S.C. 1703) provides for the seizure and forfeiture of vessels built, purchased, or fitted out for the purpose of being employed to defraud the revenue or to smuggle merchandise into the United States or into the territory of a foreign government (providing the foreign government has reciprocal provisions with respect to the laws of the United States). That section further provides that the fact that the vessel has become subject to pursuit as provided in 19 U.S.C. 1581, or fails to display lights as required by law, shall be prima facie evidence that the vessel is being employed to defraud the revenue of the United States.

Under 49 U.S.C. 1509, the Secretary of the Treasury is authorized to apply to civil aircraft the laws and regulations relating to the administration of the Customs laws and to the entry and clearance of vessels, to such extent as the Secretary deems necessary. Furthermore, 49 U.S.C. 1474 establishes a $500 penalty for each violation of such regulations and, in the case of a violation by the owner or person in command, the penalty is a lien against the aircraft which may be enforced by summary seizure or a libel in rem. In addition, any aircraft used in connection with any violation of the Customs laws or regulations made applicable to aircraft shall be liable to seizure and forfeiture as provided for in the Customs laws.

Based on these statutes, the provisions of the Anti-Smuggling Act, particularly those sections relating to seizure of vessels fitted out for smuggling or not displaying lights (19 U.S.C. 1703), may be made applicable to aircraft, regardless of the origin of the flight. An aircraft thus could be seized under 19 U.S.C. 1703 for having been employed to defraud the revenue or to smuggle merchandise. Operating without lights would constitute a statutory presumption of such violation.

However, because of the wording of section 6.10, 19 U.S.C. 1703 applies only to aircraft arriving from noncontiguous foreign territories. Customs is not aware of any reason for the different treatment applicable to aircraft arriving from contiguous and noncontiguous foreign territory which is provided for by section 6.10.

The inability to apply the provisions of 19 U.S.C. 1703 to aircraft arriving from contiguous foreign territory has hampered Customs enforcement efforts on the United States-Mexico border. Customs officers have documented an increasing number of aircraft crossing the border under cover of darkness to avoid detection and apprehension. All aircraft are required to display navigation lights after sunset and before sunrise by the Federal Aviation Administration regulations (14 CFR 91.73). Numerous instances of aircraft flying without navigation lights have been detected by Customs officers along the border and many aircraft have been found with seats removed or otherwise altered or fitted out for smuggling. Therefore, it is believed that many of these "smuggler" aircraft could be detected and apprehended if the appropriate Customs laws were applied. Accordingly, it is proposed to amend section 6.10 to provide for the application to aircraft arriving or having arrived from any foreign territory of all enforcement and administrative provisions administered by Customs which are applicable to vessels arriving or having arrived from a foreign port or place.

AUTHORITY

This amendment is proposed under the authority of R.S. 251, as amended, and sections 624, 644, 46 Stat. 759, 761 (19 U.S.C. 66, 1624, 1644, 49 U.S.C. 1474, 1509 (b) and (c)).

COMMENTS

Before adopting this proposal, consideration will be given to any written comments, submitted timely to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.8(b), Customs Regulations (19 CFR 103.8(b)), during regular business hours at the Regulations and Research Division, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., room 2335, Washington, D.C. 20229.

INAPPLICABILITY OF EXECUTIVE ORDER 12044

This document is not subject to the Treasury Department directive (43 F.R. 52120) implementing Executive Order 12044, "Improving Government Regulations," because the proposal was in process before May 22, 1978, the effective date of the directive.

DRAFTING INFORMATION

The principal author of this document was Leonard L. Rosenberg, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

PROPOSED AMENDMENT TO THE REGULATIONS

It is proposed to amend section 6.10, Customs Regulations (19 CFR 6.10), to read as follows:

6.10 General Provisions.

Except as otherwise provided for in this part, and insofar as such laws and regulations are applicable, aircraft arriving or having arrived from any foreign port or place and the persons and merchandise, including baggage, carried thereon, shall be subject to the laws and regulations applicable to vessels arriving or having arrived from any foreign port or place, to the extent that such laws and regulations are administered by the Customs Service.

R. E. CHASEN,
Commissioner of Customs.

Approved: November 13, 1979.

RICHARD J. DAVIS,
Assistant Secretary of the Treasury.

[Published in the Federal Register, December 17, 1979 (44 F.R. 73122)]

Change in Procedure to Expedite the Processing of Requests for Copies of Rulings/Decisions

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice informs the public that, effective November 13, 1979, all requests for copies of rulings/decisions issued by the Office of Regulations and Rulings should be directed to the legal reference area in that office.

EFFECTIVE DATE: November 13, 1979.

FOR FURTHER INFORMATION CONTACT: Sandra Reese, Legal Reference Area, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229; 202–566–5095.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Prior to November 13, 1979, all requests for copies of rulings/decisions issued by the Office of Regulations and Rulings were processed by the Freedom of Information and Privacy Branch, Entry

Procedures and Penalties Division, Office of Regulations and Rulings. However, in an effort to expedite the processing of these requests, this responsibility has been assumed by the legal reference area of that office. Requests for rulings/decisions "listed" in the Customs Bulletin will continue to be processed by the legal reference area.

ACTION

Effective November 13, 1979, all requests for rulings/decisions issued by the Office of Regulations and Rulings should be directed to the legal reference area at the following address:

U.S. Customs Service
1301 Constitution Avenue NW.
Room 2404
Washington, D.C. 20229

Requests for rulings/decisions "listed" in the CUSTOMS BULLETIN should also be directed to the legal reference area at the same address but should be separate from other rulings/decisions requests.

All requests should be in writing. Only those requests which will take an unusually long time to process will be acknowledged.

DRAFTING INFORMATION

The principal author of this document was James A. Seal, Regulations and Research Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices within the Customs Service participated in its development.

Dated: December 7, 1979.

HARVEY B. FOX,
Acting Director, Office of Regulations and Rulings.

[Published in the Federal Register, December ——, 1979 (44 F.R. ———)]

U.S. Customs Service

Customs Service Decisions

The following are decisions made by the U.S. Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the CUSTOMS BULLETIN.

Dated: December 11, 1979.

DONALD W. LEWIS,
Director, Office of Regulations and Rulings.

(C.S.D. 79-437)

General System of Preferences: Pipe Fittings Threaded in a Country Other Than a Beneficiary Developing Country

Date: November 9, 1978
File: R:CV:S JLV
055619

This ruling concerns Customs determination that the threading of stainless steel pipe fittings is a manufacturing process resulting in a substantial transformation.

Issue.—Are stainless steel pipe fittings eligible for duty-free treatment under the generalized system of preferences (GSP) if the fittings are cast in Taiwan, shipped to Japan for threading, and shipped back to Taiwan for inspection, packaging, and shipment to the United States?

Facts.—Except for the threading process, stainless steel pipe fittings would be produced in Taiwan. The fitting would be shipped to Japan for the purpose of threading them to U.S. specifications and then shipped back to Taiwan for inspection, repacking, and shipment to the United States.

The fittings would only require a threading operation in Japan. No machining or cutting to length would be necessary.

Law and analysis.—The issue as to whether the imported threaded fittings would be eligible for duty-free treatment under the GSP

hinges in the first instance on whether or not the threading operation substantially transforms the fittings into new and different articles of commerce. If it does not, then the second question to be answered is whether the shipment from Taiwan to the United States is "imported directly" within the meaning of general headnote 3(c)(ii), Tariff Schedules of the United States (TSUS), and section 10.175 of the Customs Regulations. Because our ruling on the first question is determinative of the issue, we do not address the second question.

In order to qualify for duty-free treatment under the GSP, an article must, among other requirements, be designated as eligible for the GSP and be a product of a designated beneficiary developing country (BDC). See general headnote 3(c) ,TSUS, and section 10.176 of the Customs Regulations. Taiwan has been designated as a BDC, and, therefore, stainless steel fittings which are products of Taiwan, if designated as eligible articles under the GSP, may qualify for duty-free treatment.

In *Midwood Industries, Inc.* v. *United States*, 64 Cust. Ct. 499, C.D. 4026 (1970), the Customs Court determined that imported steel forgings were transformed into different articles having a new name, character, and use by the manufacturing processes of cutting, boring, facing, spotfacing, drilling, tapering, threading, bevelling, and heating and compressing. At issue in *Midwood Industries* was the sufficiency of the country of origin marking at the time of importation. This decision was followed by the Customs Service in T.D. 75–199, 9 Customs Bulletin 435, concerning country of origin marking on unmachined hose coupling castings. Customs held in T.D. 75–199 that although the castings were made as close to the dimensions of the finished form as possible, they are necessarily further processed by substantial manufacturing operations (machined, drilled, threaded, cadmium plated, and assembled with a rubber gasket) in order to transform them into goods which are of use to the final consumer. In both the above cases, threading was a manufacturing process involved in transforming the forgings or castings into fittings or couplings which were determined to be new and different articles of commerce having a new name, character, or use.

The threading performed on the stainless steel fittings would be the only processing performed in Japan. However, we are of the opinion that the end result of the threading process is the transformation of the fittings into new and different articles of commerce. Threading, in this case, is a substantial manufacturing process.

Because the articles in question would no longer be products of Taiwan after the threading, we need not reach the question as to whether the articles are imported directly from Taiwan.

Conclusion.—The process of threading stainless steel pipe fittings

substantially transforms them into new and different articles of commerce so as to make them products of the country in which the threading process is performed. In this case the articles would no longer be products of Taiwan. As products of Japan they would not be eligible for duty-free treatment under the GSP.

(C.S.D. 79–438)

Special Appraisment: Brassieres Containing Straps Assembled Abroad With U.S. Components; Item 807.00, TSUS

Date: December 18, 1978
File: CLA–2:R:CV:MSP
058598 FC

In your letter of September 25, 1978, on behalf of (name of company) you request a ruling on the question whether U.S. components in certain brassiere straps assembled in Costa Rica were eligible for tariff treatment under the provisions of item 807.00, Tariff Schedules of the United States (TSUS), when imported as components of finished brassieres.

Briefly, until May 1972, all kits of brassiere components exported from the United States to (company's) foreign assembly plants contained shoulder straps that had been made in the United States. In March 1972, fabricated strap components of U.S. origin began to be exported to an assembly plant in Costa Rica. There straps were made up by minimal sewing and the threading of buckles onto precut strapping. After the straps were made up, some were attached to brassieres and those remaining were returned in bulk to the United States. Consumption entries were filed for the bulk strap shipments on which were claimed the item 807.00, TSUS, exemption for the value of the fabricated strap components, all of which were of U.S. origin.

Beginning in May 1972, some of the straps that had been imported in bulk shipments were exported, along with straps made in the United States, to (company's) assembly plants in Costa Rica, Honduras, and Jamaica, as parts of kits from which finished brassieres were assembled. After foreign assembly, the finished brassieres were imported into the United States, and the item 807.00 TSUS, exemption was claimed for the value of the finished straps.

The principal question involved is the dutiability of the U.S. components in the brassiere straps when such brassiere straps were returned to the United States the second time attached to finished brassieres.

It is your position that, upon importation of the finished brassieres

containing the straps in question, the U.S. components from which the straps were assembled were still eligible for tariff treatment under the provisions of item 807.00, TSUS.

You believe that only the difference between the value of the straps at the time of their exportation from the United States and the value of the U.S. components from which they were assembled properly should be subject to duty at the rate applicable to the brassieres of which they were a part.

As you are well aware, goods imported under item 807.00, TSUS, are considered to be foreign products. Accordingly, unless some significant operation was performed in the United States over and above merely exporting the brassiere straps previously imported under the provisions of item 807.00, TSUS, for further assembly abroad into finished brassieres, the brassiere straps have retained their status as foreign articles for tariff purposes, having been imported once under the provisions of item 807.00, TSUS. The assembly provisions of item 807.00, TSUS, extend only to products of the United States and not to foreign articles.

On page 2 of your letter of September 25, 1978, you refer to page 10 of the volume of the Tariff Classification Study devoted to schedule 8, TSUS, proposing the following language for item 807.00, TSUS:

> Articles assembled abroad in whole or in part of products of the United States which were exported for such purpose and which have not been advanced in value or improved in condition abroad by any means other than the act of assembly.

Clearly this language pertains only to products of the United States, and certainly not to the brassiere straps in question which are considered to be of foreign origin. Furthermore, regardless of the fact that the brassiere straps are of foreign origin, the brassiere strap components which were already assembled were not exported for purposes of assembly.

On page 3 of your letter of September 25, 1978, you refer to the report on the bill that became Public Law 89–806, in which the House Ways and Means Committee said, in part, as follows:

> Your committee agrees that the benefits of item 807.00 should not be extended unless it is established that the U.S. products in the imported foreign article are in fact of U.S. origin. However, in the light of information now available, the committee believes that to condition the exception of the cost or value of U.S. components from duty assessment upon a showing that the components were exported for the specific purpose of assembly abroad goes too far beyond the criteria under the former law and significantly reduces the export opportunities of U.S. industry which item 807.00 would otherwise afford.

We concede that this position is correct. However, we believe the

brassiere strap components in question must be assembled on the particular exportation which is to be considered, and not on a previous exportation and subsequent importation. At the time of exportation for assembly the domestic article must be a separate fabricated component and not merely a part of a larger assembled product of foreign origin.

Further, on page 3 of your letter of September 25, 1978, you express your view that there is not any suggestion in the legislative history of item 807.00, TSUS, that a U.S. component undergoing nothing more than assembly could not receive such benefits because it moved from one country to another or in and out of the United States.

We concede that this is true with respect to U.S. components exported to be assembled which merely move from one country to another in a continuous chain of assembly. However, this is not the case when U.S. components are assembled abroad and returned to the United States because then they become a foreign article and remain as such upon a second importation.

It is our opinion that an article of merchandise must be assembled abroad before an importation upon which the provisions of item 807.00, TSUS, is claimed, and a similar claim upon a second importation of an already assembled article is not allowable. Merchandise can be imported only once to qualify for tariff treatment under item 807.00, TSUS, as the initial assembly renders it a foreign product.

This position is, in our view, supported by a clear reading of the relevant headnotes and the provisions of item 807.00, TSUS. You concede and the wording of headnote 2, schedule 8, TSUS, mandates, that the brassiere straps when first assembled in Costa Rica and then exported to the United States are "foreign articles." You postulate that even though the straps are "foreign articles" the "except" clause found in the headnote should be read to allow free entry for the components of the straps on the second importation. We disagree. The clause in question is plain "except as otherwise prescribed in this part". Thus, we need to examine the language of item 807.00, itself. This provision, by its own terms, applies to "Articles assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly* * *." In the instant situation, the article is clearly the completed brassiere, and the "fabricated component" which was exported is the strap, which as indicated earlier is not a "product of the United States." In short, we believe that the correct reading of this provision is that it refers to the specific component which is exported for assembly. This position is supported by the language in the duty column of the TSUS, which allows for a deduction only for the value "of such products of the United States." Again, this language can only be read to refer to the specific component exported.

Finally, the language of headnote 3, part 1, subpart B of schedule 8, TSUS, also mandates this conclusion. It requires that in applying this provision use be made of "the value of such products at the time of shipment for exportation." Here too, we must look to the "product" exported to be assembled into the final article; that product is the strap which, as even you have agreed, is not a product of the United States. Thus, it is our conclusion that the only way to accept your position would be to read the provisions in question to include "products of foreign countries, containing U.S. components, exported in condition ready for assembly" and that is clearly not the intent of the provision. Our past rulings serve to confirm this conclusion.

This issue was involved in a review of protest where the question was whether watch movements, having once been assembled abroad from parts of U.S. origin and entered under item 807.00, TSUS, may be exported for assembly into watch cases and reentered as returned American goods.

The merchandise consisted of digital watch movements assembled in Hong Kong from component parts of U.S. origin. The movements were then sold to the importer who exported the movements back to Hong Kong for encasement with foreign-made watch cases, and returned to the United States as assembled watches. The importer believed the American-made components contained in the movements should be entitled to free entry under item 800.00 TSUS.

In a December 22, 1976 ruling, we concluded that such tariff treatment was precluded by the previous importation of the assembled parts under item 807.00, TSUS, as goods imported under that item are considered to be foreign products for tariff purposes.

We further concluded that articles assembled abroad from domestic components would not be entitled to duty-free tariff treatment as American goods returned, in the absence of evidence of substantial transformation after the first importation into the United States and before exportation. Since nothing was done to the movements before exporting them for encasement, we ruled that they retained the commercial character of foreign products within the headnote provisions and as such were not entitled to either item 800.00 or 807.00 tariff treatment.

Our decision of May 28, 1976, involved the tariff status of certain metal pins inserted into plastic connectors in Mexico and returned to the United States. Small gold-plated metal pins and plastic connectors were exported to Mexico where the pins were inserted into preexisting holes in the connector sockets. Upon return to the United States, the pins were secured in the sockets by mechanically pulling the pins through the plastic body until the pins snapped into place, and the tips were capped with plastic. Once the pins were pulled and capped,

the plastic bodies with permanently fixed pins were again exported to Mexico as connectors for soldering to circuit boards and returned to the United States.

We concluded that joining the parts together in an assembly constituted at least an improvement in condition while abroad that negated the application of item 800.00, TSUS, upon return of the assembled articles. We referred to headnote 2, part 1 of schedule 8, TSUS, which states that any imported article which has been assembled abroad in whole or in part of products of the United States, shall be treated for the purposes of the tariff act as a foreign article.

We concluded that in the absence of evidence of substantial transformation after importation into the United States, the connectors would not be entitled to item 807.00 tariff treatment upon being soldered to the circuit boards and returned once again to the United States. We believed that the described process of pulling and capping the pins in the connectors would not constitute a substantial transformation for tariff purposes so as to change the foreign character of the articles.

On page 4 of your letter of September 25, 1978, you refer, in part, to the text of item 807.00, TSUS, referring to products of the United States which were exported in condition ready for assembly without further fabrication. The brassiere strap components in question were not assembled abroad upon the second exportation, since they were already assembled at the time of the first importation and subsequent exportation.

The evidence of record discloses that the subject brassiere straps were assembled articles when exported, and because of initial assembly abroad were foreign articles, and that no assembly of the brassiere strap components took place after the second exportation. Accordingly, tariff treatment under the provisions of item 807.00, TSUS, is precluded.

(C.S.D. 79–439)

Vessel Clearance: Whether U.S. Vessel Proceeding Foreign Via Domestic Ports Without a Permit to Proceed is Subject to Penalty

Date: January 15, 1979
File: VES–5–20–R:CD:C
103577 DR

This ruling concerns the applicability of section 4.87 to vessels of the United States proceeding foreign via domestic ports.

Issue.—Are the provisions of section 4.87 (a), (b), (c), and (d)

applicable to vessels of the United States proceeding foreign via various domestic ports to lade cargo?

Facts.—It appears that a vessel under frontier enrollment and license lades cargo at Alpena, Mich., proceeds to Duluth, Minn., to lade additional cargo, and departs for Thunder Bay, Ontario, Canada, where the cargo is unladen. The vessel proceeds from Alpena to Duluth without a permit and at Duluth the vessel presents a manifest for the entire lading of the vessel and obtains a clearance for Thunder Bay. Customs authorities at the two domestic ports involved have a difference of opinion as to whether penalties should be assessed and, if so, under what statute.

Law and analysis.—You advise that it has been suggested sections 4.81 and 4.87 are in conflict in that, while section 4.81 exempts vessels when carrying merchandise between points in the United States from the requirements for reporting arrival, making entry, or obtaining clearance or a permit to proceed, section 4.87 requires vessels proceeding to a foreign port via domestic ports to obtain a permit to proceed from one domestic port to another.

Because sections 4.81 and 4.87 are concerned with different kinds of vessel activities, we do not find that the different requirements for each activity are inconsistent. (We note that this is a position advocated by you in page 5 of your memorandum.) Accordingly, we do not believe that the matter under consideration warrants further consideration of the provisions of section 4.81.

Since section 4.87 is the regulation with which this matter is primarily concerned, our comments will be with respect to its provisions.

You state that although section 4.87 clearly provides that a U.S. vessel which intends to proceed foreign via domestic ports is required to obtain a permit to proceed to each domestic port, no penalty is provided for failure to comply and the statutes cited as authority for this provision of section 4.87 are not pertinent.

Headquarters has previously ruled that where a vessel of the United States is engaged on an outward foreign voyage via domestic ports to lade domestic cargo, the master should comply with the provisions of section 4.87. The ruling concluded that "No penalty is, however, provided for violation of that section in the case of an American vessel." Therefore, as there is no penalty for non-compliance, the provisions of paragraphs (a), (b), (c), and (d) with respect to vessels of the United States may be regarded as advice or recommendations only, or, in your words, "precatory."

You cite the case of *The Pilot*, 36 F. 2d. 250 (D. Maine 1929), which indicates that an American vessel is not required to obtain clearance or a permit to proceed from the first domestic port before proceeding foreign so long as the vessel obtains a foreign clearance from the last

domestic port. You state that 46 U.S.C. 91 was amended after *The Pilot* was decided and surmise that perhaps the amendment was to alter the import of the decision in that case. Prior to the amendment, section 91 provided for a penalty of $500 against the master for departing without delivering a manifest and obtaining a clearance. The amendment provides for more severe sanctions in the form of a penalty of $500 to $1,000 against the master if the vessel departs without a clearance or if the master delivers a false manifest, does not truly answer the questions demanded of him, or if he adds to the cargo after filing a manifest.

This amendment was enacted as part of the Anti-Smuggling Act of 1935 and the hearings on this amendment disclose that this section of the act was not for the purpose of modifying the rationale of *The Pilot*, but, in the words of C. M. Hester, of the Office of the General Counsel of the Treasury Department:

> No pecuniary penalty is at present (prior to the amendment) provided for violation of this (master's) oath. The present proposed amendment is designed to cure this situation by providing severe penalties for such false statement, which are (sic) almost invariably indicative of smuggling activity.
>
> This section (proposed amendment) is in a sense reciprocal, inasmuch as we have often asked foreign governments to penalize their vessels for making false statements on clearing from foreign ports, although we ourselves have never heretofore similarly penalized masters of American vessels. The present amendment will make future requests of this type consistent with our own laws.

Holding.—In view of the foregoing, including our previous ruling on the matter, we agree with your suggestion to the Regional Director of Inspection and Control that no penalties be issued to vessels of the United States for failure to comply with the provisions of section 4.87 requiring a vessel to obtain a permit to proceed between domestic ports when en route to a foreign port.

(C.S.D. 79–440)

Brokers: Cancellation of Customhouse Broker's License

Date: January 15, 1979
File: BRO 3–04 R:E:E
306847 DW

ASSISTANT REGIONAL COMMISSIONER OF ADMINISTRATION,
New York, N.Y. 10048.

DEAR SIR: This is in reference to your correspondence of December 6, 1978, concerning (name), the holder of individual customhouse

broker's license No. 915, issued October 4, 1930, for the New York Customs region.

The records of the Customs Service reflect that (name) has not maintained an active customhouse brokerage business since at least 1934. We have had no contact with him since 1944 and are unable to locate him at the present time. You recommend that (name's) license be canceled. We recognize that in all likelihood (name) has no intention of using his license; however, we are unable to follow your recommendation.

Section 641(b), Tariff Act of 1930, as amended, and part 111, Customs Regulations, set out specific procedures under which a license may be canceled or revoked. Briefly, revocation can occur only after procedures are followed to meet administrative due process requirements including an order to show cause and a hearing. Cancellation can occur only upon the written application of the broker or, in the obvious case of the individual dying or a corporation or partnership dissolving. Under the circumstances presented here, there is no method by which the Customs Service may cancel or revoke the license. Under the provisions of Public Law 95–410, section 641, Tariff Act of 1930, was amended to include a new subsection (c). This amendment requires triennial reports starting February 1, 1979, by all licensed brokers as to whether they are actively engaged in business as a customhouse broker. We believe that this provision of law may be appropriately utilized in this type of case.

Accordingly, if (name) has not filed a statement with your office by February 1, 1979, as to whether he is actively engaged in the customhouse brokerage business, his license should be placed in an inactive status, but it should not be considered canceled or revoked under the provisions of section 641, Tariff Act of 1930, as amended. If at some time in the future (name) wishes to reactivate his license he may do so and headquarters should be notified.

(C.S.D. 79–441)

Generalized System of Preferences: Substantial Transformation of Bulk Recording Tape

Date: January 24, 1979
File: R:CV:S BB
055634

Issue.—Whether rolls of bulk recording tape are substantially transformed in Mexico into new and different articles of commerce;

the cost or value of which can therefore be included in the calculation of the 35-percent value-added requirement of GSP.

Facts.—Rolls of bulk recording tape, 26 inches wide and in lengths from 10,500 feet to 14,800 feet, which are products of the United States, will be exported to Mexico. At the company's plant in Mexico, the bulk tape rolls will be cut into two 13-inch sections. Each section will then be trimmed on the edges by approximately 1 inch to insure straightness and the trimmed rolls will be in turn cut into "pancakes" of tape 0.15 inch wide and the same length as the roll from which it is cut. Approximately 160 pancakes will be cut from each roll. One end of the tape from the pancake is then attached to the leader of a blank cassette, a predetermined length of tape is wound into the cassette, the end cut and the cut end attached to the second leader of the cassette. This process is repeated until the pancake is depleted. In excess of 40 cassettes may be made from 1 pancake.

Law and analysis.—Under the generalized system of preferences (GSP) eligible articles produced in designated beneficiary developing countries (BDC) enter the United States duty-free if the sum of (1) the cost or value of the materials produced in the BDC plus (2) the direct costs of processing operations performed in such BDC, is not less than 35 percent of the appraised value of such article at the time of its entry into the customs territory of the United States. In other words, 35 percent of the value of the article, either materials or processing (or both), must be attributable to the BDC. Materials which are not wholly the growth, product, or manufacture of the BDC must be substantially transformed into a new and different article of commerce which is then used to produce the eligible article before their cost or value can be included in the 35-percent requirement.

The inquirer relies on ORR ruling 77–0010 (CLA–2–R:CV:S RE 044590) in support of its assertion that the bulk recording tape undergoes a substantial transformation before its incorporation into the finished cassette. In that ruling Customs determined that sheets of clear, plastic, polarized, yellow lens materials, and sheets of polyurethane foam insulation, had been substantially transformed by cutting into shapes ready for assembly into finished ski goggles. This is consistent with a line of rulings in which we have held that cutting materials in raw form into defined shapes or patterns suitable for use in making finished articles effects a substantial transformation of the raw materials. At the same time we have attempted to distinguish cases in which raw materials are merely cut to length and/or width. We regard the facts here at issue as falling within this latter category. In our opinion the fact that several, rather than one, cutting operation is performed on the tape is not significant enough to alter the outcome.

Holding.—Bulk recording tape, cut in a series of steps down to 0.15 inch "pancakes" and cut to specified lengths after winding onto the cassette, has not been substantially transformed into a new and different article of commerce. Therefore, the cost or value of the tape may not be included in the calculation of the 35-percent value-added requirement of GSP.

(C.S.D. 79-442)

Trademark Restrictions: Simulation of the Nike "Wing Design" on Imported Footwear

Date: January 25, 1979
File: TMK-3-R:E:R
709729 O

This ruling concerns the applicability of the prohibition set forth in 19 U.S.C. 1526 against the importation of foreign merchandise bearing an American trademark.

Issue.—Would the importation of shoes bearing a mark similar to the "Wing Design" infringe upon the rights of the American trademark owner which has recorded its trademark with Customs for import protection.

Facts.—Customs has issued a notice of redelivery for a shipment of 405 cartons of footwear, made in Korea, bearing a design described by the importer as a "truncated expanding colored bar." The importer submitted a letter to our Seattle district office dated December 12, 1978, in which the opinion is expressed that the side trim does not simulate the distinctive NIKE "wing" which is a low-swooping vanishing colored curve that ends in a sharp point. BRS, Inc., an Oregon corporation, has recorded its "Wing Design" and "NIKE" trademarks with Customs for import protection. Our Seattle, Wash., district office has asked for our opinion as to whether these shoes would be subject to seizure and forfeiture as infringing upon the rights of the American trademark owner. A sample shoe was submitted from the shipment in question along with a photograph of a shoe bearing the "Wing Design" trademark.

Law and Analysis.—Section 526 of the Tariff Act of 1930, as amended (19 U.S.C. 1526), and part 133, subpart A, of the Customs Regulations (19 CFR 133.1-133.7) provide for the recordation of trademarks with Customs for import protection. Section 133.21 of the Customs Regulations provides, in part, that, "Articles of foreign or domestic manufacture bearing a mark or name copying or simulat-

ing a recorded trademark or trade name shall be denied entry and are subject to forfeiture as prohibited importations."

Infringement of federally registered marks is governed by the test of whether defendant's use is likely to cause confusion, or to cause mistake, or to deceive. When comparing conflicting marks to determine whether or not they are confusingly similar, it is important to consider the impression which the mark as a whole creates on the average reasonably prudent purchaser. While the mark in question differs slightly from the protected mark in that the pointed end of the wing design is not duplicated in the imported shoe, we are of the opinion that the reasonably prudent purchaser of footwear, upon viewing these imported shoes with the curved contracting stripe design on the vamp, would be confused, in all likelihood, as to the source, connection, or sponsorship of the merchandise being purchased.

Holding.—Entry of the imported footwear bearing the curved contracting stripe design on the vamp would be prohibited as infringing on the "Wing Design" trademark registration of BRS, Inc., which has been duly recorded with the Customs Service for import protection. Unless otherwise exempted, the infringing merchandise would be subject to seizure and forfeiture pursuant to section 133.22(c) of the Customs Regulations.

Country-of-Origin Marking: Folding Knives Manufactured in the United States and Processed Abroad

Date: January 25, 1979
File: MAR-2-05-R:E:R
709721 AH

This ruling concerns the country-of-origin marking requirements applicable to knives produced in the United States and sent to Japan or another foreign country for customization of the handle covers and shipped back to the United States for sale.

Issue.—Whether the changing of the handle covers of a completed functional knife while abroad results in a substantial transformation of the knives and if such operation affects the country-of-origin marking requirements for purposes of 19 U.S.C. 1304.

Facts.—Completed functional folding knives are produced in the United States and shipped to Japan or another foreign country where the standard plastic handle covers are removed and replaced with new handle covers of natural materials such as mother-of-pearl, staghorn, wood, and bone and returned to the United States for sale.

The importer proposes to mark the knife blades to indicate that the

knives in question are products of the United States with the designation "U.S.A." at the time the knives are manufactured in the United States.

Law and analysis.—Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), requires that every article of foreign origin imported into the United States shall be legibly and conspicuously marked to indicate to the ultimate purchaser in the United States the English name of the country of origin, with certain exceptions.

Section 134.1, Code of Federal Regulations, title 19 (19 CFR 134.1), provides that further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin." In order for the knives to be considered a product of Japan or another foreign country, the process taking place in these countries must result in a substantial transformation by which a new and different article emerges. If a substantial transformation does not take place, the knives are not considered articles of foreign origin subject to the marking requirements of 19 U.S.C. 1304.

In the instant case, finished knives will be exported from the United States. Their value will be increased in a foreign country by the substitution of more expensive handle covers, but the identity of the articles as knives will not be changed.

Holding.—It is the opinion of this office that the customization process of changing standard plastic handle covers on the knives and replacing them with natural materials in Japan or another country does not constitute a substantial transformation. Therefore, the knives are not to be considered a product of foreign origin upon their return to the United States, for purposes of 19 U.S.C. 1304. Accordingly, there will be no objection to the marking "U.S.A." on the blades of the knives when they are returned to the United States.

This ruling does not affect the classification of the knives for duty purposes.

(C.S.D. 79-444)

Foreign Trade Zones: Substandard and Defective Semiconductors

Date: January 26, 1979
File: FOR-1-R:CD:D S
209549

Issues.—1. How are imported substandard and defective semiconductor units in a foreign trade zone with privileged status classifiable?

2. When is the value of defective semiconductors included ("yielded") in the value of standard and substandard commercially marketable units?

3. How is "waste" defined in the foreign trade zone context?

4. How is waste created by manipulation or manufacture in a foreign trade zone classified and appraised when transferred into Customs territory?

Facts.—Semiconductors produced abroad consist of standard, substandard, and defective devices. The three categories usually are indistinguishable until tested and sorted. Defective semiconductors are valuable only for their material content.

The devices may be sorted overseas, and the standard units entered for consumption and the substandard and defective units, still commingled, entered into a foreign trade zone. Alternatively, all three categories of devices may be imported into a foreign trade zone for sorting and testing. In either case, the marketable units in the zone may be entered into the Customs territory after testing and sorting.

There is a secondary market for substandard semiconductors, primarily for use in hobby kits or toys, but several manufacturers prefer to destroy the substandard units rather than risk unexpected warranty claims. The market value of unsorted substandard and defective devices exceeds the scrap value of such devices. An average of 10 to 15 percent of all semiconductors manufactured during a given period are defective.

Unsold and unsalable substandard and defective devices are destroyed in a foreign trade zone. Those made of plastic are ground up, and those made of ceramics are placed in an acid bath to dissolve the bonding material and metal. The ceramic material and the gold content of the remaining scrap is recoverable.

The commingled substandard and defective units imported into the foreign trade zone may have either privileged or nonprivileged foreign status, as provided in part 146 of the Customs Regulations. When standard, substandard, and defective units are shipped to the zone, privileged foreign status is requested for the shipment.

Law and analysis.—

1. Classification of privileged foreign merchandise

Section 81c of the Foreign Trade Zones Act of 1934, as amended, provides that:

> whenever the privilege shall be requested and there has been no manipulation or manufacture effecting a change in tariff classification, the appropriate Customs officer shall take under supervision any lot or part of a lot of foreign merchandise in a zone, cause it to be appraised and taxes determined and duties liqui-

dated thereon. If merchandise so taken under supervision has been manipulated or manufactured such duties and taxes shall be payable on the quantity of such foreign merchandise used in the manipulation or manufacture of the entered article.

Section 146.21(c)(3)(i) of the Customs Regulations provides that privileged foreign merchandise shall be classified and appraised in its condition and quantity according to the rates of duty and tax in force on the date the request for privileged foreign status if filed.

Substandard units which are commercially marketable as other than waste or scrap have the same form and identity as the standard units of the same type. They are classifiable under the same provisions of the tariff schedules.

When defective units are commingled with substandard units, general headnote 7 of the Tariff Schedules of the United States (TSUS) applies. The commingled articles are subject to the highest rate of duty applicable to any of the commingled devices, which is the rate for substandard units.

Destroyed and totally defective semiconductors are classifiable as waste or scrap under item 793.00 or 605.70, TSUS, depending on the component material of chief value.

The district director shall obtain whatever evidence of the condition and value of the merchandise he deems necessary for classification and appraisement. He may require evidence that the particular shipment being classified and appraised is of marketable quality and is in fact salable. He should not assume that all shipments are of uniform quality or that a market for substandard units exists at the time a particular shipment is classified and appraised.

2. Appraisement of semiconductors

Constructed value under section 402(d) of the Tariff Act of 1930, as amended (19 U.S.C. 1401a(d)), is the appropriate basis of appraisement in this case. Constructed value is determined by the costs of producing such or similar merchandise, as defined in section 402(f), profits, and packing expenses.

The Customs Service ruled on August 25, 1977 (file No. R:CV:V EA 541153), that "all the usual and ordinary expenses incurred in the manufacture of defective units are costs of manufacture of the standard units and are to be included in their constructed value." This ruling was premised on the understanding that the semiconductors imported into the United States were either standard or totally defective units. It is now known that some of the units thought to be totally defective might in fact be salable in a secondary market. They are substandard in quality but not totally defective.

When an importer requests privileged zone status for commingled substandard and defective devices, "it will not be known which devices are defective until after the merchandise is subject to appraisement. The fact that some of these devices are found to be defective after they are appraised and after privileged status has been requested does not affect the prior appraised value of the devices." Customs ruling letter of February 9, 1977 (file No. R:CV:V NAM 540812). In other words, the identification of defective or incomplete devices in the shipment after appraisement does not permit or require the value of these units to be included ("yielded") in the constructed value of the other units. The appraised value of the standard or marketable substandard units is not affected by events subsequent to appraisement.

3. Definition of waste

Section 146.23(b) of the regulations states that "waste recovered from *any* manipulation or manufacture of privileged foreign merchandise in a zone" [italic added] is to have the status of nonprivileged foreign merchandise. Therefore, the crushing or dissolution in acid of commingled semiconductors having foreign privileged status, for the purpose of reducing them to recoverable waste, results in "waste" having foreign nonprivileged zone status, not a "product" of the manipulation or manufacture of privileged foreign merchandise having privileged foreign status under section 146.21(d) of the regulations. Waste in this context includes everything classificable in TSUS as waste, however formed.

4. Appraisement of waste

Section 81c of the Foreign Trade Zones Act of 1934, as amended (19 U.S.C. 81c) provides that recoverable waste resulting from the manipulation or manufacture of privileged foreign merchandise "shall be dutiable and taxable in its condition and quantity and at its weight at the time of entry" into Customs territory. Under section 146.48 of the Customs Regulations, nonprivileged foreign merchandise and recoverable waste resulting from the manipulation in a zone of privileged foreign merchandise is classified and appraised when it is constructively transferred to Customs territory.

The value of waste formed in the zone from privileged or nonprivileged foreign merchandise is not yielded into the value of merchandise classified and appraised at an earlier date. This is true even though the merchandise from which the waste is formed was classified and appraised earlier as privileged foreign merchandise.

Holdings.—1. The classification of commingled substandard and defective semiconductors depends on their marketability. If market-

able as other than waste or scrap, they may be classifiable as standard units under general headnote 7, TSUS. If not marketable as semiconductors they are classifiable as waste or scrap under either item 605.70 or 793.00, TSUS, depending on the component material of chief value.

2. The costs of producing the merchandise are distributed among all semiconductor units classifiable as standard units. Only the value of semiconductor units classifiable as waste or scrap is yielded into the value of standard units.

3. As used in the foreign trade zone statute and regulations, "waste" means everything classifiable as waste, however formed.

4. Waste formed by manipulation or manufacture in the zone of privileged or nonprivileged foreign merchandise is classified and appraised in its character and condition at the time of entry into Customs territory. The value of such waste or scrap is not yielded into that of merchandise appraised at an earlier date.

(C.S.D. 79–445)

Drawback: Whether There is a Time Limit for Liquidation of Drawback Entries

Date: January 26, 1979
File: DRA–1–R:CD:D K
209929

Issue.—Whether the new section 504 (19 U.S.C. 1504) added to the Tariff Act of 1930 by the Customs Procedural Reform and Simplification Act of 1978 (Public Law 95–410), prescribing a time limitation within which to liquidate entries for merchandise, is applicable to drawback entries.

Law and analysis.—Sections 1484, 1500, and 1504, title 19, United States Code, concern the filing and liquidation of entries covering imported merchandise. Section 1313, title 19, United States Code, concerns the exportation of merchandise and claims for drawback or refund of duties.

Paragraph (j) of section 1313 provides that the "allowance of the privileges provided for in this section shall be subject to compliance with such rules and regulations as the Secretary of the Treasury shall prescribe, which may include, but need not be limited to, *the fixing of a time limit within which drawback entries or entries for refund under any of the provisions of this section or section 1309(b) shall be filed and completed,* and the designation of the person to whom any refund or payment of drawback shall be made."

Under the authority of section 1313(j), title 19, United States Code, section 22.13 of the Customs Regulations requires that a drawback entry shall be filed within 3 years after the date the articles are exported. However, there is no applicable regulation or law that sets forth a time limitation within which Customs must complete or liquidate a drawback entry.

Holding.—The Customs Procedural Reform and Simplification Act of 1978, Public Law 95–410, does not prescribe a time limitation within which Customs must liquidate or complete drawback entries.

(C.S.D. 79–446)

Drawback: Whether Certain Merchandise of Differing Chemical Composition is of the "Same Kind and Quality" Under 19 U.S.C. 1313(b)

Date: January 29, 1979
File: DRA–1–09–R:CD:D T 209522

This ruling concerns the allowance of drawback under the provisions of the law for the substitution of domestic merchandise for imported merchandise.

Issue.—Can domestic Torak technical and imported Torak technical, of different chemical composition, be considered to be merchandise of the same kind and quality under 19 U.S.C. 1313(b)?

Facts.—A company proposes to substitute domestic Torak technical, which contains dialifor, the principal ingredient, having a percentage range of purity of 75 to 90 percent, for imported Torak technical with dialifor having a percentage range of purity of 90 to 93 percent. There are also differences in the other specifications for the imported and domestic merchandise.

Law and analysis.—Section 1313(b) provides, in part:

> If imported duty-paid merchandise and duty-free or domestic merchandise of the same kind and quality are used in the manufacture or production of articles * * * there shall be allowed upon the exportation of any such articles, * * * an amount of drawback equal to that which would have been allowed had the merchandise used therein been imported * * *

As indicated in the *facts* section, above, there is variation in the dialifor content of the imported and domestic merchandise. The difference covers a range of 75 to 93 percent, and there are other differences in the specifications. The two types of Torak technical may be used in producing the exported articles only with material adjustment in the manufacturing process. In other cases involving differences in the per-

centage of purity of the principal ingredient of the imported and domestic merchandise, approval has been given only where no substantial change in the manufacturing process was required.

Holding.—Domestic Torak technical having a dialifor content of 75 to 90 percent purity range is not merchandise of the same kind and quality as imported Torak technical which has a dialifor content of 90 to 93 percent purity range within the meaning of section 1313(b). The company's application for a rate of drawback, therefore, cannot be approved.

(C.S.D. 79-447)

Vessel Entry: Merchandise Destined to One Consignee but Arriving in More than One LASH Barge

Date: January 29, 1979
File: ENT-1-01 R:E:E
305920 M

ASSISTANT REGIONAL COMMISSIONER (OPERATIONS),
New Orleans, La. 70112.

DEAR SIR: This is in reply to your memorandum of April 28, 1978, under section 177.11 of the Customs Regulations, as to whether merchandise laden aboard more than one LASH barge but destined for one consignee may be entered under a single formal entry.

You noted that since LASH barges have been judicially determined to be vessels, they are subject to the same Customs entrance and clearance requirements as the mother vessel. When a LASH vessel discharges its barges at one port and certain of the barges are taken under a single tow to another port where the merchandise destined to one consignee at that port is unladen to be entered there, your region currently permits the consignee to file one entry for all his merchandise. You ask whether section 141.51 of the Customs Regulations, which provides that with certain exceptions all merchandise arriving on one vessel or one vehicle and consigned to one consignee shall be included in one entry, prohibits this practice.

We believe that your practice of permitting the consignee to file one entry for his merchandise, even though arriving on more than one LASH barge on a tow of barges, is permissible and does not violate Customs laws or regulations. It is noted that the entire shipment left the country of exportation on the mother vessel. It was only after the merchandise arrived at the first port in the United States, that the barges were discharged from the mother vessel for transportation of the merchandise to another port under a single tow. For purposes of

the Customs entry of merchandise requirements, we regard the barges located on the mother vessel and used to transport the merchandise to the second port of entry as mere extensions of the mother vessel.

In your background file, you make mention of supertankers (VLCC's) which anchor outside the Customs limits of the United States and lighter petroleum into small tankers which transport the petroleum to the U.S. ports. As in the case of the LASH barges, each lightering tanker is regarded as a vessel and subject to customs vessel entrance and clearance requirements. However, since the petroleum left the country of exportation on the VLCC and was not transferred to the lightering tankers until the VLCC arrived outside the port limits, we likewise believe that the lightering tankers for purposes of Customs entry of merchandise requirements can be considered to be an extension of the VLCC. Thus, it is our opinion that a district director may, at his discretion, permit a consignee to file a single entry for his merchandise arriving from the same country of exportation outside the port of entry on the same VLCC, even though transported to the port of entry by different lightering vessels, provided such vessels arrive at the port of entry on the same day.

Although we have discussed your problem in the context of entry procedures which were in effect on the date of your inquiry, it should be noted that under the new entry procedures established by Public Law 95–410, which became effective on December 2, 1978, the formal entry is now called entry summary. Thus, in our discussion, the word "entry" should be regarded as referring to the entry summary, on and after December 2, 1978.

(C.S.D. 79–448)

Drawback: Use of First-in-First-out Accounting Principles

Date: February 14, 1979
File: DRA–1–R:CD:D B 209857

Issue.—Must articles on which drawback is claimed under section 313(b) of the Tariff Act of 1930, as amended, be shown to have been manufactured with merchandise of the same kind and quality within the timeframes required or is it sufficient to show that the articles might have been so manufactured?

Facts.—A drawback claimant does not have records to establish that articles he exported and on which he claims drawback were manufactured with imported merchandise or domestic merchandise of the same kind and quality. Nor do the records show that the articles

were manufactured within the timeframes required by the law and regulations. However, the use of first-in-first-out accounting principles (FIFO), which was approved in a ruling issued December 5, 1978,[1] makes it possible to show that the articles could have been produced with merchandise of the same kind and quality within the required timeframe.

Law and Analysis.—The substitution drawback law (sec. 313(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1313(b)) and the Customs Regulations based thereon (sec. 22.5(a) (3) and (4)) require that the claimant show that exported articles on which drawback is claimed were manufactured or produced with designated (imported) merchandise, domestic or duty-paid merchandise of the same and quality, or a combination of the two, within a specified timeframe. To show only that the articles could have been manufactured with the use of the required merchandise and within the required timeframe is not sufficient.

Holding.—A drawback applicant must have records to show that he has complied with section 22.5(a) (3) and (4) of the Customs Regulations and the law on which these sections are based. The fact that he possibly complied with these provisions, or put another way, that it cannot be shown he did not comply with them, is not sufficient.

(C.S.D. 79–449)

Entry: Whether Entry is Required for an Automobile Used by its U.S. Resident Owner for a Vacation in Canada

Date: March 9, 1979
File: ENT–1–01 R:E:E
306690 M

This ruling deals with the question of whether the innocent purchaser of an automobile which does not conform to Federal safety and emission standards must file an entry and post a bond on his return to the United States from vacation in Canada.

Issues.—Is a consumption entry and deposit of estimated duties appropriate in the above situation? Even if a consumption entry is not required, may Customs demand that the returning resident post an entry bond for the purpose of bringing the automobile into conformity with the Federal safety and emission standards?

Facts.—In February 1977, an American resident purchased a 1968 BMW automobile from a diplomat. He believed it was a 1972 model.

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[1] Published in the CUSTOMS BULLETIN as C.S.D. 79–252.

The diplomat had previously imported the automobile and filed an informal entry without posting a bond. The diplomat at the time of entry in accordance with sections 12.73 and 12.80 of the Customs Regulations checked the appropriate declarations which permitted her to bring in the car because of her diplomatic status although it did not conform to the safety and emission standards. This declaration stated that she was bringing in the automobile for her own personal use and that the automobile would not be sold. The American resident when he purchased the automobile was unaware that the automobile did not conform to the safety and emission standards.

In March 1977, the American resident drove the automobile to Canada for a vacation. When he returned later that month to the United States, Customs officers at the Northern border examined the automobile and found that it did not conform to the safety and emission standards. Not having the complete facts before them, they thought that the returning resident was importing the automobile and required him to file an entry, deposit estimated duty, and post an entry bond.

The District Director of Customs for the district where the automobile was returned from Canada by the American resident is now aware of the complete factual situation and requests permission to cancel the entry and the bond, and to refund the duties paid since: (1) The returning resident took the automobile to Canada with full intent to return it to the United States, and (2) the automobile was registered by the returning resident in a State in the United States prior to its departure from the United States. The two Federal agencies involved for enforcing the safety and emission standards believe that the entry, or at a minimum the bond, should not be discharged until the returning resident has either brought the automobile into conformity with the safety and emission standards, or has exported or destroyed such automobile under Customs supervision.

Law and Analysis.—Two important cases concerning the question of exportation and importation, *Nassau Distributing Co., Inc.* v. *United States*, CD 1459, and *F. W. Meyers & Co., Inc.* v. *United States*, CD 1468, hold that an article is not exported from the United States unless: (1) It is physically taken out, and (2) there is an intent to export (which means there is an intent to sever the goods from the mass of things belonging to this country with the intent of uniting them to the mass of things belonging to some other country.) In this case the returning resident took the automobile to Canada with the full intent of returning it to the United States and therefore no exportation or subsequent importation occurred within the meaning of such terms as defined by case law. Since no exportation or reimportation took place, no entry or deposit of estimated duties was required.

The entry bond obligation is taken in connection with the entering of merchandise into the commerce of the United States. In this instance, since there was no exportation of the automobile in the Customs sense, the automobile was already a part of the commerce of the United States when it returned and there was no requirement to enter an article into the commerce of the United States, which is already part of that commerce.

Holding.—The District Director is correct that no entry or entry bond should have been taken for the automobile involved. The District Director should therefore cancel the entry and the bond and should refund to the returning resident the duties paid in connection with that entry.

(C.S.D. 79–450)

Bond Requirements: Execution of and Necessity for a "Certificate as to Corporate Principal"

Date: March 13, 1979
File: BON–1–R:CD:D WR 209947

This ruling concerns the signing of Customs bonds and bond riders by a corporate principal.

Issues.—1. Whether an attorney-in-fact may sign for the principal on a bond or bond rider that is within the Automated Bond Information System (ABIS)?

2. Whether the "certificate as to corporate principal" is a necessary part of any ABIS bond or bond rider and must be included on a privately printed bond form even though the bond or rider is signed by an attorney-in-fact?

Facts.—No facts were presented by the inquirer.

Law and Analysis.—Section 113.26 of the Custom Regulations (19 CFR 113.26) sets the general requirements for ABIS bonds and bond riders. Section 113.34 of the Customs Regulations (19 CFR 113.34) sets the requirements for corporate principals on Customs bonds. Because a bond rider simply amends an existing bond, the same requirements set forth in sections 113.26 and 113.34 also apply to bond riders.

Paragraph (a) of section 113.34 requires the corporate name to be followed by the written signature of the authorized corporate officer or attorney-in-fact. Paragraph (c) of the same section establishes the signing requirements when the bond or bond rider is to be executed by a corporate officer. Execution of the "certificate as to corporate principal" simply provides proof that the corporate officer who actually

signs the bond or bond rider is authorized to bind the corporation. That proof may be shown by other evidence. See paragraph (c)(2) of section 113.34.

In addition, if the corporate principal has appointed an attorney-in-fact, following the requirements set forth in subpart B of part 141 of the Customs Regulations, that attorney may execute a bond under section 113.34(d). Because the power of attorney must be executed by an authorized corporate officer, the power of attorney itself provides acceptable proof of authority to bind the corporation. Accordingly, there is no need to complete the certificate as to corporate principal on a bond or bond rider executed by an attorney-in-fact.

The inclusion of the certificate as to corporate principal clause in the format of bonds such as the General Bond for Entry of Merchandise, Customs Form 7595, and rider R is primarily for the purpose of illustration. It must be completed if the bond or bond rider, including any ABIS rider, is executed by a corporate officer under the provisions of section 113.34(c)(1). Conversely, if the bond or bond rider is executed by one of the alternative methods set forth in section 113.34(c)(2) or section 113.34(d), the certificate as to corporate principal need not be completed. Therefore, unless it is used to prove the authority of the person signing the bond or bond rider for the corporate principal, it may be omitted from a privately printed form. On the other hand, the absence of the certificate as to corporate principal clause on the bond rider formats set out in T.D. 73–198, T.D. 73–284, T.D. 73–329, T.D. 76–246, and T.D. 78–140 does not excuse its use if those riders are signed under the procedure set forth in section 113.34(c)(1); in that situation the clause must be added to the appropriate format and completed.

Holding.—The Customs Regulations permit an attorney-in-fact to sign any Customs bond or bond rider, including a bond on Customs form 7595 and rider R, for the attorney's corporate principal.

If a bond or bond rider is to be signed by a corporate officer under the procedure set in section 113.34(c)(1), the certificate as to corporate principal must be included in the bond or bond rider form and must be completed. If the bond or bond rider is to be signed by any of the authorized alternative means of execution, there is no need for a certificate as to corporate principal clause to appear on the executed bond or bond rider.

(C.S.D. 79-451)

Entry of Aircraft: Temporary Importation for Repair and Export of Foreign-Owned Commercial Aircraft

Date: March 14, 1979
File: CON-9-R:CD:D R
209787

This ruling concerns the temporary importation of a foreign aircraft for repairs and the exportation after repair of the aircraft.

Issues.—(1) Whether an aircraft manufacturer may use section 10.36a, Customs Regulations (19 CFR 10.36a), to import temporarily a commercial aircraft belonging to a foreign airline in order to repair or alter that aircraft and return it to the foreign airline.

(2) Whether an article exported with drawback may be temporarily imported under bond for purposes of repair or alteration.

(3) Whether a temporary importation bond covering the importation of an aircraft under item 864.05, Tariff Schedules of the United States (TSUS), is satisfied if the aircraft departs carrying cargo or passengers and stops at other U.S. airports on its outward-bound route.

(4) Whether an engine or other part that is removed from an aircraft as a result of a repair or alteration under item 864.05, TSUS, must be exported with that aircraft.

(5) Whether an "Application for Exportation of Articles Under Special Bond," Customs Form 3495, or "Transportation Entry and Manifest of Goods Subject to Customs Inspection and Permit," Customs Form 7512, may be used to export an aircraft as a result of the repair or alteration of that aircraft.

Facts.—The inquirer states that an aircraft manufacturer brings in a foreign-owned commercial aircraft under a temporary importation bond (TIB) to replace the engines. The TIB entry is made using the provisions of 19 CFR 10.36a, which permits the bond to be filed without a surety. In some instances the aircraft was exported with drawback. During the alteration procedure, the original engines are replaced with newer engines. When the alteration is completed, the foreign airline picks up its aircraft at the importer's facility and departs the United States for the home country. Typical departure routes involve stops at New York or Chicago for an ultimate destination in Europe. In addition, the departing aircraft may carry revenue passengers and cargo. In some instances, it is not feasible to place the removed engines in the original aircraft.

Law and analysis.—Section 10.36a, Customs Regulations, allows the operator of a vehicle, pleasure boat, or aircraft to import temporarily that article for repairs or alterations under item 864.05, TSUS. The section allows an operator to make entry under a bond that is not secured by a surety or cash deposit. The use of the terms "operator" and "pleasure boats" and the permission to make entry on the operator's baggage declaration indicate that the section is limited to an entry made by a natural person rather than a legal entity such as a corporation. Further, the context indicates that the section was intended to cover noncommercial importations; that is, an individual importing a personal aircraft in order to have it repaired or altered. Section 10.36a was added to the Customs Regulations by T.D. 66–39. The preamble to the regulatory amendment states, "In order to facilitate the entry and clearance of certain vehicles, aircraft, and pleasure boats brought into the United States *by an individual* for repair or alteration * * *, it has been determined that such vehicles, aircraft, and pleasure boats may be entered under the importer's baggage declaration supported by a bond for temporary importations, Customs form 7563, without surety or cash deposit in lieu of surety" [italic supplied].

The statutory requirements for entry in item 864.05, TSUS, are set forth in the headnotes to schedule 8, TSUS, and part 5 of the schedule. Headnote 1 to schedule 8 states, in part, that any article which is described in any provision in this schedule is classifiable in said provision if the conditions and requirements thereof and of any applicable regulations are met. It is clear that articles that were exported with drawback are not excluded from being classified in schedule 8 because items 804.10 and 804.20, TSUS, specifically provide for their entry. Moreover, headnote 2, to part 5C, schedule 8, TSUS, establishes the only statutory restrictions to item 864.05, TSUS none of which apply to an aircraft that was exported with drawback.

Sections 10.31 and 10.40 of the Customs Regulations contain the administrative scheme for controlling temporary importations under bond. There is no regulatory restriction in those sections which would prohibit entry under item 864.05, TSUS, for an aircraft or any other article that was exported with drawback. Since insofar as it is pertinent to the repair or alteration of an aircraft, every article that is temporarily imported in item 864.05, TSUS, must be timely exported or destroyed under Customs supervision in order to satisfy the conditions of the bond, there is no need to restrict item 864.05, TSUS, to articles of foreign manufacture. A failure properly to export or destroy the temporarily imported article will result in the assessment of liquidated damages. In addition, if it can be shown that the importer made a negligent or fraudulent false declaration as to the ultimate exportation

or destruction on the entry, the importer could be subject to penalties under section 592 of the Tariff Act of 1930, as amended (19 U.S.C. 1592).

In T.D. 78–288, the Customs Service ruled that an aircraft that had been temporarily imported for repairs in item 684.05, TSUS, could satisfy the requirement for exportation even though it left the United States in international traffic.

However, under the act of August 23, 1958, Public Law 85–726, 72 Stat. 798 (49 U.S.C. 1508), foreign civil aircraft are specifically prohibited from taking on at any point within the United States, persons, property, or mail carried for compensation or hire and destined for another point within the United States. Section 10.41(d) of the Customs Regulations (19 CFR 10.41(d)) requires a regular entry for any foreign-owned aircraft that is brought in for the purpose of carrying merchandise or passengers between points in the United States as an element of a commercial transaction. If an aircraft is diverted to unpermitted point-to-point local traffic within the United States, it is withdrawn from international traffic.

Sections 10.38 and 10.39 of the Customs Regulations (19 CFR 10.38 and 10.39) establish the requirements and procedures governing the exportation of temporarily imported articles and the cancellation of bonds covering those articles. There is no requirement for each article covered by a TIB entry to be exported at the same time. However, the bond liability is not canceled until each article covered by a TIB entry is properly exported or destroyed. The failure properly to export or destroy each of the articles covered by the bond subjects the obligors on the bond to liquidated damages in the full amount of the bond although that liability might be mitigated under section 10.39(f) of the Customs Regulations (19 CFR 10.39(f)) in an appropriate case.

Section 10.38 of the Customs Manual sets forth the procedural requirements for exportation of articles under temporary importation bond. For a temporarily imported article that is to be examined and exported at the same port, use of the "Application for Exportation of Articles Under Special Bond," Customs Form 3495, is prescribed by section 10.38 of the Customs Manual. If the TIB article is to be examined at one port and exported at another port, both Customs forms 3495 and 7512 must be used. The results of examination will be noted on Customs form 3495 at the port of examination. Both forms are to be completed at the port of exportation as to the fact of exportation, but no further examination will be done.

Holding.—(1) An aircraft manufacturer is not entitled to use section 10.36a of the Customs Regulations (19 CFR 10.36a) to import

temporarily a commercial aircraft belonging to a foreign airline under item 864.05, TSUS.

(2) An article that was exported with drawback may be brought into the United States on a TIB entry.

(3) The requirement of exportation can be satisfied with the departure in international traffic of a temporarily imported aircraft. While stops incident to the movement in international traffic do not change the character of an international flight, unpermitted point-to-point transportation of cargo or passengers within the United States constitutes a diversion from international traffic.

(4) It is not necessary for each article covered by a TIB entry to be exported or destroyed at the same time, but until each of those articles is properly exported or destroyed the obligors on the bond remain liable for the full amount of the bond.

(5) Customs forms 3495 and 7512 are to be used in connection with the exportation of a temporarily imported article. The particular form to be used depends on the exportation procedure selected by the importer.

(C.S.D. 79–452)

Warehouse: Transfer of Duty-Paid Distilled Spirits to Customs-Bonded Warehouse

Date: March 19, 1979
File: WAR–1–R:CD:D WR 209903/210019

This ruling concerns the right to warehouse duty-paid distilled spirits after they are rectified in a bonded distilled spirits plant.

Issue.—Whether a distiller may store duty-paid distilled spirits in a Customs-bonded warehouse after those spirits are rectified in a distilled spirits plant?

Facts.—A distiller imports distilled spirits and enters them into a Customs-bonded warehouse. The distiller removes the spirits from the warehouse under a withdrawal for consumption, paying any duty due. The withdrawn spirits are moved into a Bureau of Alcohol, Tobacco and Firearms distilled spirits plant where they are rectified and bottled for export. Because spirits that are intended for domestic use as well as those that are intended for export may be bottled at the same time in a distilled spirits plant, that type of plant provides more flexibility for a distiller than a Customs-bonded manufacturing plant (class 6 warehouse).

After rectification, the spirits for export are moved from the controlled premises of the distilled spirits plant to an export storage facility on the premises. The distiller wants to move the distilled spirits into a Customs-bonded warehouse for storage pending exportation. The distiller also wants to move other distilled spirits that were rectified at the other distilled spirits plants into the same Customs-bonded warehouse in order to consolidate shipments before they are exported.

Law and analysis.—The act of November 14, 1977, Public Law 95–176, 91 Stat. 1363 (hereafter referred to as act), amended the Internal Revenue Code relating to distilled spirits. Among other things, it extended tax drawback to imported distilled spirits that are packaged or bottled in the United States for export and it allowed distilled spirits that were bottled-in-bond, or were returned to an export storage facility for export, to be transferred to a Customs-bonded warehouse for storage pending exportation.

Section 2(a) of the act amended 26 U.S.C. 5215(b) to permit a bottler or packager to return distilled spirits that qualify for drawback under 26 U.S.C. 5062(b) to an export storage facility on the bonded premises of the bottling or packaging plant for storage pending export. The section allowed distilled spirits to be returned to a facility for credit or refund of any previously determined tax. Sections 201.581(b), 252.26, 252.27, 252.91, and 252.91a of the regulations of the Bureau of Alcohol, Tobacco and Firearms (27 CFR 201.581(b), 252.26, 252.27, 252.91, 252.91a) implement the pertinent parts of the act. Under section 252.26(a)(2) a transfer from the export storage facility of a distilled spirits plant to any Customs-bonded warehouse for the purpose of storage pending exportation is treated as a withdrawal for exportation. The preamble to T.D. ATF–51, at 43 F.R. 24232, makes it clear that such a transfer from the export storage facility is considered to be the equivalent of an exportation.

Sections 19.15(g)(2) and 144.15 of the Customs Regulations (19 CFR 19.15(g)(2) and 144.15) govern the entrance and withdrawal of those distilled spirits at a Customs-bonded warehouse.

Because 27 CFR 252.91a, in pertinent part, limits the use of an export storage facility to storage pending withdrawal for exportation, a distilled spirits plant proprietor may not consolidate shipments of distilled spirits from the export storage facilities of other plants at the proprietor's export storage facility. However, eligible distilled spirits that are transferred to a Customs-bonded warehouse may be consolidated at that warehouse.

Holding.—In compliance with the applicable regulations, a distiller may warehouse duty-paid distilled spirits that were rectified in a

distilled spirits plant pending actual exportation of those spirits and may consolidate shipments of distilled spirits in the warehouse for exportation.

(C.S.D. 79-453)

Vessel Entrance: Whether a Floating Structure is Classifiable as a "Vessel" Subject to the Maritime Laws but Not Subject to TSUS

Date: March 29, 1979
File: VES-1-01-R:CD:C
103758 DR

This ruling concerns the classification of certain floating structures as either vessels or merchandise.

Issues.—1. Whether a floating structure which is brought into the United States under tow for the purpose of being scrapped is classifiable as a "vessel" and hence not subject to the Tariff Schedules, or as merchandise subject to the schedules.

2. Whether a vessel which arrives in the United States in the course of navigation and is subsequently burned while in the United States and towed to another U.S. port for scrapping is classifiable as a "vessel" at the second port and hence not subject to the Tariff Schedules, or as merchandise subject to the schedules.

3. Whether a floating structure which is brought into the United States under tow for the purpose of being repaired, and which will presumably depart the United States as a vessel, is classifiable as a "vessel" and hence not subject to the Tariff Schedules, or as merchandise subject to the schedules.

Law and analysis.—Pursuant to general headnote 5(e), Tariff Schedules of the United States (TSUS), vessels which are not yachts or pleasure boats owned by a resident of the United States or brought in for sale or charter to such resident are not subject to the schedules and are not dutiable. These vessels are, of course, subject to the navigation laws, including those pertaining to entry, clearance, and permission to proceed between U.S. ports. This exemption from the schedules and the liability to the navigation laws are applicable to vessels whether self-propelled or those which can only move in tow of another vessel.

Title 19, United States Code, section 1401(a), defines the term "vessel" as a watercraft or contrivance used or capable of being used as a means of transportation on water. However, the mere fact that an article can float and be moved on water does not necessarily bring

that article within the term "vessel," as used in the Customs and navigation laws.

The case of *Hitner Sons Co.* v. *United States* (T.D. 41175), involved the classification of a structure which had previously seen service as a vessel, which was towed into the United States to be scrapped. The court found that the structure's machinery was incapable of propelling the vessel, even raising the anchor, and unable to perform any other function for which it was intended; that the steam lines and electrical machinery had been disconnected, the hoisting engines scrapped, and the refrigeration system was out of commission. In addition, the metal deck plates were rusted and full of holes. Maritime experts testified that the structure could not be made into a merchant vessel and could be used only for scrap or junk.

In holding the structure not to be a "vessel," the court commented:

> In order to come within the definition of a "vessel" as fixed by section 3, Revised Statutes, the service upon which the thing in question can engage must be a maritime service. It must have some relation to commerce or navigation, or at least some connection with a vessel employed in trade. It must be engaged in, or in some sense related to commerce and navigation. The fact that the structure has the shape of a vessel, or has been once used as one, or could by proper appliances be again used as such, can not affect the question. The test is the actual status of the structure as being fairly engaged in or suitable for, commerce or navigation and as a means of transportation on water.
>
> Applying these principles to the facts in the case at bar, it is obvious that the *Niobe* when brought within the Customs jurisdiction of the country, was not a "vessel" within the meaning of section 3, Revised Statutes. It was not used, nor could it be used, in any way, in commerce or navigation, either in itself or in conjunction with other agencies of such commerce or navigation. It was absolutely useless as a means of transportation of persons or property on water and had no possible availability except such use as might be made of the materials of which it was composed, and such fixtures and appliances as might be attached to it.

It is the condition of articles when brought into the United States which controls their classification, not what the article becomes after it is brought into the country. *U.S.* v. *Citroen*, 223 U.S. 407 (1911).

Regarding dutiability, see section 4.40, Customs Regulations.

Holding.—1. A floating structure which is brought into the United States under tow for the purpose of being scrapped is a "vessel" within the meaning of general headnote 5(e), TSUS, if at the time it is brought in it is fairly suitable for maritime service. A rusted or burned-out hull, or a floating structure which is devoid of any equipment or fixtures necessary for the performance of a maritime service would generally not be considered a "vessel." A floating structure

which arrives in the United States in the course of navigation in a maritime service would be classified as a "vessel," even though the vessel is scrapped subsequent to its arrival.

2. A floating structure which arrives in the United States in the course of navigation is a "vessel" and, of course, subject to the laws respecting entry. However, if that vessel is burned or otherwise becomes unfit for maritime service while in a U.S. port, upon its removal to another U.S. port for scrapping it would no longer be considered a "vessel," and, likewise, would no longer be subject to the laws respecting entry, clearance, and permission to proceed. Upon its arrival at another U.S. port, it would not be classified as a "vessel." See section 4.40, Customs Regulations.

3. A floating structure which is brought into the United States for scrapping but which is instead repaired and leaves the United States as a vessel would be classified upon arrival in accordance with the principles set forth in holding No. 1. The fact that it was repaired so as to become fit for the maritime service would not relate back and affect its classification upon arrival. Of course, upon its departure from the United States as a "vessel," it would be required to comply with the laws respecting clearance.

(C.S.D. 79–454)

Removal of Merchandise From a Foreign Trade Zone: Whether Removal May Be by a TIB Entry

Date: April 2, 1979
File: CON–9–R:CD:D WR 209800

Issue.—May merchandise be removed from a foreign trade zone by means of a temporary importation under bond (TIB) entry?

Law and analysis.—Section 146.31(a) of the Customs Regulations prohibits removal of merchandise from a zone except as provided elsewhere in part 146. There is no provision in part 146 for removal by TIB entry.

There is no valid reason to prohibit removal of merchandise from a zone by TIB entry. The reason that there is no specific provision for such removal appears to be that TIB's in the past have been referred to as consumption entries for various purposes.

Holding.—Merchandise may be entered into the Customs territory from a foreign trade zone by a TIB entry. However, it should be noted that the date of importation is the date as defined by section 101.1(h) of the Customs Regulations.

(C.S.D. 79–455)

Classification: Conditionally Free Merchandise; Film Negatives, Pasteups, and Film Positives Imported for Examination and Reproduction

Date: April 3, 1979
File: CON-9-08-R:CD:D MM
210128

Issue.—Whether film negatives, pasteups, and film positives may be entered under item 864.25, Tariff Schedules of the United States, for examination and reproduction onto film negatives or ceramic plates.

Facts.—Film negatives, pasteups, and film positives will be imported for the purpose of producing foreign language instruction manuals for calculators. An English transcript will be sent to a foreign subsidiary for translation into the language of the country of intended sale of the calculators. A film negative, pasteup, or film positive is created after each translation and exported to the United States.

If the imported merchandise is found to be satisfactory after examination, the film negative, pasteup, or film positive will be reproduced onto either a film negative or a ceramic plate. Reproduction of the imported negative or positive onto a film negative is accomplished by placing the negative or positive over an unexposed film negative, exposing light through the negative or positive onto the unexposed negative, and later developing the film negative. The imported pasteups are reproduced onto a film negative by taking a photograph of the pasteup and developing the image onto a film negative. The film negatives which have been produced will later be used by a printer to manufacture printing plates from which the foreign language manuals will be printed in the United States.

The reproduction of imported film negatives onto a ceramic plate is performed by placing several negatives on a piece of opaque paper containing a number of precut windows. Each negative is positioned over a separate window and when necessary the borders of the negatives are trimmed to prevent their overlapping the useable portion of adjoining negatives. After the negatives are taped into place a pulsed Xenon light source is then projected through the film negative onto a ceramic plate that has a presensitized coating. Etching solution is applied to the exposed plate and the plate is coated with a thin film of gum arabic. The plate is then used to print the foreign language manuals in the United States.

After the reproduction procedure is completed the imported negatives, pasteups, and positives along with any waste resulting from the

border trimming will be exported or destroyed under Customs supervision.

Law and analysis.—Item 864.25, Tariff Schedules of the United States, provides for the entry temporarily free of duty under bond of articles solely for examination with a view to reproduction or for such examination and reproduction (except photoengraved printing plates for examination and reproduction); and motion picture advertising films. The articles in question may not be imported for sale or for sale on approval and must be exported or destroyed under Customs supervision within the required time. The bond is taken in a sum equal to twice the duties which it is estimated would accrue if the articles covered thereby had been entered under an ordinary consumption entry. Cash may be deposited in lieu of surety on the bond and will be refunded upon exportation or destruction of the articles. The period of the bond may upon application be extended for additional periods which when added to the initial 1-year period cannot exceed a period of 3 years.

Holding.—Based on the facts presented above the film negatives, pasteups, and film positives would qualify for entry under item 864.25, TSUS, upon compliance with the law and regulations.

(C.S.D. 79–456)

Conditionally Free Merchandise: Computer Equipment Imported for Testing

Date: April 10, 1979
File: CON–9–09–R:CD:D L 210018

Issue.—Computer control equipment is sold on an installment purchase basis by a foreign company to its subsidiary in the United States. The subsidiary will import the equipment and lease it to a company in the United States for a period of 12 to 18 months where it will be tested and evaluated with a view to future purchases of the equipment. May the U.S. subsidiary of the foreign company import the equipment temporarily free of duty under bond under the provision for articles intended solely for testing, experimental, or review purposes, including plans, specifications, drawings, blueprints, photographs, and similar articles for use in connection with experiments or for study in item 864.30, Tariff Schedules of the United States (TSUS)?

Facts.—The domestic subsidiary of a foreign company will purchase on an installment basis and import computer control equipment. The imported equipment, in turn, will be leased to a U.S. company for a period of approximately 12 to 18 months for evaluation of the hard-

ware and software. Under the terms of the lease, the U.S. company will pay the importer approximately $3,000 per month plus and unspecified monthly consultation and service support charge. The charge under the lease is said to be a special rate considerably below the normal rate to allow the U.S. company and the importer to share the cost in a joint effort to explore the possiblities of future commerical contracts. Arrangements have been made for the foreign manufacturer to repurchase the equipment from the importer at the conclusion of the testing and evaluation period.

A letter from the U.S. company is attached to the submission and describes the testing and evaluation to be conducted on the imported system. In addition to evaluation of the operating system, language processing system, and hardware operation, it includes testing of the interconnect capability of the equipment with other equipment and demonstration of the systems to potential users within the company.

Law and analysis.—Item 864.30 TSUS, provides for admission free of duty under bond for articles intended solely for testing, experimental, or review purposes.

Headnote 1(a) to schedule 8, part 5, subpart C, TSUS, provides in part that the articles described in the provisions of this subpart, when not imported for sale or for sale on approval, may be admitted into the United States without the payment of duty, under bond for their exportation within 1 year from the date of importation, which period, in the discretion of the Secretary of the Treasury, may be extended, upon application, for one or more further periods which, when added to the initial 1 year, shall not exceed a total of 3 years.

The importer points out that through the lease and service agreement payments it will receive economic benefit beyond the actual testing and evaluation of the equipment. It submits, however, that the primary purpose of the importation is for testing and evaluation since potential future purchases of the equipment cannot occur until the U.S. company has had an opportunity to perform actual inservice testing and evalution. The equipment to be tested is of relatively high value (approximately $160,000) and the lease arrangement is primarily designed to prevent a substantial economic loss during the testing period.

A review of Customs decisions under item 864.30, TSUS, and its predecessor, section 308(4), Tariff Act of 1930, discloses that articles may be entered under a temporary importation bond when there is an intention to test the article itself, or when the imported articles or merchandise are imported to be used as the raw material in testing another domestic or imported article. Item 864.30, TSUS, is not available for importation of articles which, rather than being tested themselves, are imported to test other articles.

Holding.—The fact that the testing of the computer control equipment leads to the incidental testing of another article or articles for compatibility in operation with the imported article does not preclude entry of the imported article under the provisions of item 864.30, TSUS. The fact that the payment of nominal lease charges and consultation and service charges to the importer will result in economic benefit to the importer is incidental to the primary purpose of the importation, which is for testing. In this case, the equipment may be imported under item 864.30, TSUS.

(C.S.D. 79–457)

Vessels: Special Tonnage Duties; Vessel Entering From Foreign Port Where U.S. Vessels Are Not Permitted to Enter or Trade

Date: May 18, 1979
File: VES–11–11–R:CD:C
103994 DR

[Telegram]

Information copy: District director, Portland, Oreg.

Retel 5–11, arrival in Longview, Wash. of Greek (vessel) from North Korea in ballast via Victoria, B.C., where vessel took on bunkers. Vessel was assessed special tonnage duties at Longview pursuant (to) 4.20(c), Customs Regulations, for entering from a foreign port where U.S. vessels are not permitted to enter and trade.

Because vessel laded no cargo but only bunkers in Victoria, origin of voyage deemed North Korea, which is a country contemplated by 4.20(c).

However, the clause of the sentence of 46 U.S.C. 121, upon which subject regulation is based, provides that "none of the duties on tonnage above mentioned" shall be levied on vessels of those nations which do not discriminate against U.S. vessels. Although our information is that North Korean ports are closed to U.S. vessels, Greece does not discriminate against U.S. vessels.

Accordingly, as it is a rule of statutory construction that a qualifying clause is to be applied at least to its immediate antecedent, the (vessel) is not subject to the special tonnage duties assessed pursuant to section 4.20(c).

(C.S.D. 79-458)

Entry: Release of Merchandise Under Immediate Delivery Permit; "Entered" Defined

Date: May 24, 1979
File: ENT-1-01 R:E:E
710003 M

This ruling reviews a protest against a district director's determination that merchandise released under an immediate delivery permit is not considered entered until a consumption entry is filed in proper order with estimated duties attached.

Facts.—Several shipments of melons imported from Mexico were released under immediate delivery permits prior to June 1, 1978. Consumption entries for each of these shipments were filed on or after June 1, 1978. The appropriate tariff provision involved provided in effect that the type of Mexican melons involved, if entered between December 1, 1977, and May 31, 1978, were entitled to duty-free entry under the generalized system of preferences (GSP). The district director determined that since a consumption entry with the deposit of estimated duties was not made for each of the entries prior to June 1, 1978, the merchandise was not entered prior to June 1, and therefore not entitled to duty-free entry under GSP.

Issue.—Is merchandise released under an immediate delivery permit considered "entered" at time of release?

Law and analysis.—The importer's protest concerns an interpretation of the word "entered." He believes that merchandise released under an immediate delivery permit is entered at time of release. He bases his interpretation on several court cases, *Excel Shipping Corp.* v. *United States*, 44 Cust. Ct. 55, C.D. 2153 (1960), *United States* v. *Legg*, 105 F. 930 (C.A. 2, 1901), and *Mussman & Shaefer, Inc.* v. *United States*, 27 Cust. Ct. 180, C.D. 1367, and an unpublished headquarters decision.

Item 148.25, Tariff Schedules of the United States (TSUS), provided that the Mexican melons involved were entitled to duty-free treatment under GSP. "If entered during the period from December 1, in any year, to the following May 31, inclusive." If such melons were entered at any other time, they were dutiable under item 148.30 TSUS.

Section 141.68(a) of the Customs Regulations provides that:

> No entry shall be considered to be "deposited" or "accepted," nor shall the merchandise covered thereby be considered entered within the meaning of the law or regulations applicable to the

> entry of the merchandise, until after the arrival of the merchandise within the limits of the port of entry and the subsequent deposit of estimated duties or subsequent official determination that no deposit is required.

Furthermore, section 141.68(d) of the Customs Regulations provides that:

> Entry is made under a formal consumption entry (Customs form 7501), when the specified form is properly executed and deposited, together with any related documents required by any provision of these regulations to be filed with such form at the time of entry, with the Customs officer designated to receive such entry papers, and any duties required to be paid at the time of making entry have been deposited with the Customs officer designated to receive such moneys.

In the case of *F. F. Wilcon* v. *United States*, 13 Cust. Ct. 97, C.D. 876 (1944), a trade agreement assessed duties at one rate of duty on Irish potatoes if entered between March 1 and November 30, 1940, and at a higher rate thereafter. The importer's broker filed a preliminary entry (which corresponds to our present immediate delivery permit) on November 30, and filed a consumption entry on December 3. In holding that the shipment was liable to the higher rate of duty because the entry was not filed until December 3 the court said:

> We are of the opinion that merely bringing the potatoes into the port of entry on November 30 and the withdrawal of part of the shipment on a special permit are not sufficient to entitle the plaintiff to the reduced rate of duty which expired on that day * * *.

This case is an example of the many court cases that have ruled that although merchandise may have been released under an immediate delivery permit, the merchandise is not considered entered until Customs receives a consumption entry in proper form along with the deposit of estimated duties.

It is our opinion that the three cases cited by the protestant did not support his interpretation of the word "entered." These cases are not contrary to the general rule set forth in the case of *F. B. Wilcon* v. *United States*, but set forth certain unique exceptions.

In the case of *Excel Shipping Corp.* v. *United States*, dried fava beans were entitled to the benefit of a reduced seasonal duty rate from May 1 to August 31, 1965. These beans are required to be fumigated by the Department of Agriculture. Prior to August 31, the importer entered the beans into warehouse and deposited with Customs the estimated duties for the beans. Both the warehouse entry and the warehouse permit provided that the beans were to remain in the warehouse until approved release by the Department of Agriculture. The court noted that under such factual situation the importer could have filed

a consumption entry rather than a warehouse entry. The deposit of duty with the warehouse entry indicated the importer's intent to file a consumption entry because on warehouse entries duties are not deposited until the merchandise is withdrawn from warehouse. The filing of the warehouse entry by the importer and its acceptance by the entry clerk therefore amounted to a clerical error or inadvertence within the meaning of section 520(c)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)) and the merchandise was thus entered prior to August 31.

In the case of *United States* v. *Legg*, the merchandise in question arrived at the port of entry on July 24, 1897. The provisions of the Tariff Act of 1897 did not take affect until after the close of business on July 24. To take advantage of the lower duty rate for his merchandise set forth in the Tariff Act of 1894, the importer presented to Customs his consumption entry with estimated duties. Customs refused to accept the entry because the arriving vessel had not entered and the merchandise had not been unladen from the vessel. The court ruled that since the merchandise had arrived at the port of entry, it was improper for Customs to refuse to accept the entry and deposit of duties since the goods were imported at the port of entry and thus entitled to be entered.

In the case of *Mussman & Shaefer, Inc.* v. *United States*, a shipment of plywood from Finland was imported into New York in September 1946 and was transported under bond in installment shipment to Cincinnati from October 17 to October 31, 1946. A consumption entry for the entire quantity along with estimated duties was filed at Cincinnation October 18. A Presidential proclamation stated that plywood entered on or after October 25, 1946, was free of duty. The court held that the plywood arriving in Cincinnati on or after October 25 was entitled to duty-free entry under the Presidential proclamation. In so holding, the court noted that merchandise is not considered entered until all the acts and formalities required in connection with the entry of merchandise—including the filing of entry papers and payment of estimated duties on the part of the importer and acceptance of the entry and issuance of the delivery permit on the part of the Government have been performed and in addition, either the merchandise be present and available for delivery to the importer at the port of entry or be actually physically released to the importer. This case was appealed to the U.S. Court of Customs and Patent Appeals and that court in 40 CCPA 108, C.A.D. 506 upheld the Customs Court decision.

The unpublished decision to which the protestant referred related to the examination of merchandise and was not germane to the issue at hand.

In summation, we conclude that the regulations and case decisions support the district director's decision that each shipment of melons were not entered until a consumption entry and deposit of estimated duties was received for that particular shipment.

Holding.—Although merchandise may be released under an immediate delivery permit, it is not considered "entered" until a consumption entry in proper form along with estimated duties attached is filed. The protest is therefore denied in full.

(C.S.D. 79-459)

Carrier Control: Use of Foreign-Registered Vessel in Pipelaying Operation

Date: May 30, 1979
File: VES 3-16-R:CD:C
103983 MKT

[Telegram]

Reurtel of May 3, 1979, requesting a ruling on the eligibility of a foreign-registered pipelaying vessel to lade pipe to be laid between two points embraced within the coastwise laws and to recover and transport pipe for onshore repair and return the repaired pipe for installation in the pipeline. Your client intends to extend a pipeline, which is the property of the U.S. Government, located within U.S. territorial waters, to a point in international waters on the Outer Continental Shelf. The operation also includes the recovery and transportation of sections of the existing pipeline for onshore repair and the return of sections of the repaired pipe for reinstallation in the pipeline.

To answer your questions in the order presented:

1. and 2. The use of a foreign pipelaying vessel solely to lade aboard pipe to be laid by the vessel between a point onshore or within territorial waters and another point within the waters of (a) the same State, (b) a different State, (c) the United States or, (d) in international waters above the Outer Continental Shelf is not deemed a use of the vessel in coastwise trade as contemplated by 46 U.S.C. 883. The transportation of pipe other than in a pipelaying operation between points in the United States would be in violation of section 883.

3. Pursuant to section 883, a foreign pipelaying vessel may not transport pipe sections from a point in the United States to a well cap, drill vessel in position, or fixed platform. The lading of pipe in the United States and its laying by a foreign vessel on the high seas

merely in continuation of an existing pipeline, not considered a fixed site within the meaning of the Outer Continental Shelf Lands Act, would not result in a violation of section 883.

4. If in the course of laying pipe the pipelaying vessel also engages in the related activity of retrieving old pipe in territorial waters of the United States, no violation of 46 U.S.C. 883 will occur merely because the retrieved pipe is unladed at a port or place in the United States. However, the transportation of materials for salvage from offshore drilling platforms or pipelines in United States waters would be considered coastwise trade. The use of such pipe after repair or in pipelaying activity as contemplated in 1. and 2. above will not result in any violation of section 883.

A foreign vessel will be subject to all applicable entry and clearance requirements and pipe laden or unladen will be subject to all applicable entry and export requirements.

(C.S.D. 79-460)

Carrier Control: Snowmobiles From Contiguous Countries; Report of Arrival

Date: May 30, 1979
File: BOR-1 02-R:CD:C
103902 PC

This refers to your letter of March 2, 1979, with which you enclosed a letter dated February 2, 1979, from (name of person), concerning his interest in a plan to allow operators of snowmobiles being used for recreation to pass freely between United States and Canada in the Metigoshe area without the need of traveling to a port of entry. You ask for our comments on the proposal and its possible chances of approval.

Title 19, United States Code, section 1459, requires the person in charge of any vehicle arriving in the United States from a contiguous country to immediately report "arrival to the Customs officer at the port of entry or customhouse which shall be nearest to the place at which such vehicle shall cross the boundary line." Snowmobiles are considered "vehicles" as that term is used in section 1459.

There is no law which provides for the procedures suggested by (name of person), nor does section 1459 provide for any exceptions to the reporting requirements. Since this agency merely administers and enforces the laws enacted by Congress, and does not have the authority to waive such laws, it is our opinion that the procedures

suggested would necessarily not be approved unless amendatory legislation is enacted.

While we understand the inconvenience of requiring a report of arrival at the nearest customhouse, we nevertheless lack the authority to waive that report and may lack the resources to establish separate reporting facilities across the northern border.

Despite the above-mentioned legal constraints, the district director of Customs, Pembina, N. Dak., has informed us of his willingness to discuss the problem with (name of person). Therefore, it is suggested that (name of person) present his proposals to the district director for a possible operational solution to the problem.

(C.S.D. 79-461)

Bonds: Termination of Surety's Liability on Antidumping Bond

Date: June 1, 1979
File: BON-3-R:CD:D L 209992

Issue.—When, and under what circumstances does the surety's liability on an antidumping bond (Customs form 7591) terminate?

Facts.—On December 12, 1978, there was published in the Federal Register (43 F.R. 58129) a notice of petition filed by an American manufacturer, producer, or wholesaler, pursuant to section 516(a) of the Tariff Act of 1930. The petition related to an issuance by the U.S. International Trade Commission of a no-injury determination regarding importations of portland hydraulic cement from Canada. The inquirer, a surety that has issued antidumping bonds to a person by or for whose account portland hydraulic cement has been imported and who is an exporter within the meaning of section 207 of the Antidumping Act of 1921, ask if it, as surety, still has liability on the bonds and when and under what circumstances the liability will terminate.

Law and analysis.—The antidumping bond is given to guarantee that the principal keep certain records, make certain reports, furnish to the district director such information as may be necessary for the ascertainment of the special dumping duty, and pay on demand the amount of the special dumping duty, if any. The position of the Customs Service with respect to the release of obligors on bonds is expressed in sections 113.3 and 113.18 of the Customs Regulations (19 CFR 113.3 and 113.18). Section 113.3 provides that both the principal and surety remain liable on a terminated bond for any obligation that occurred before the date of the termination. In order to

enforce that liability, the bond is retained by the district director under section 113.18.

Accordingly, the only limitation of action is that imposed by law. With respect to entries, the outside limit for a reliquidation is set by section 521 of the Tariff Act of 1930 (19 U.S.C. 1521). Under that provision, an entry may be reliquidated up to 2 years after the date of liquidation or last reliquidation if the appropriate Customs officer has probable cause to suspect fraud. The absolute upper limit for recovery of liquidated damages under a bond is set by 28 U.S.C. 2415 which requires suit to be brought within 6 years from the date on which a right of action accrued. Because the payment of duties is not considered to be an obligation for liquidated damages, the Customs Service position is that 19 U.S.C. 1521 establishes the last practical date to collect duty, including special dumping duty, under the bond. Consequently, after expiration of the time limit set in 19 U.S.C. 1521, the Customs Service could not rely on the bond in order to collect any duty due. However, until the time limit under 19 U.S.C. 1521 expires, the Customs Service considers the surety on an entry bond to be liable for the payment of duty.

Holding.—The surety's liability on an antidumping bond, pursuant to 19 U.S.C. 1521, does not terminate until 2 years after the date of liquidation or last reliquidation.

(C.S.D. 79–462)

In-Bond Carriers and Cartmen: Activities Permitted Private-Bonded Carriers

Date: June 4, 1979
File: BON–2–R:CD:D L 210180

Issues.—1. May a firm having a private carriers bond and license be issued a cartman's license against the previously filed private carrier's bond, or is an additional cartman's bond required?

2. In order to carry his own bonded merchandise directly from his private-bonded warehouse, located within the port limits of Philadelphia, to vessels berthed in neighboring ports, would it be necessary for this firm to be designated as a common carrier, or may he perform this activity as a private carrier?

Facts.—A ship chandler wishes to expand his domestic operations to include imported meats and cheese. He has recently been granted a cartman's license pursuant to section 112.21, Customs Regulations

(19 CFR 112.21), and is in the process of being designated as a class 2 importer's private-bonded warehouse pursuant to section 19.1(a)(2), Customs Regulations (19 CFR 19.1(a)(2)). In the future, he will request designation as a public-bonded warehouse under the provisions of section 19.1(a)(3), Customs Regulations (19 CFR 19.1 (a)(3)).

The applicant intends initially to withdraw imported refrigerated meats and cheese consigned to him for use as vessel supplies aboard vessels engaged in foreign trade. Thereafter, if business constraints permit, he will warehouse imported merchandise consigned to others. His initial operations will include chandlering vessels berthed at the Ports of Chester, Pa., and Wilmington, Del., as well as at the Port of Philadelphia. The imported merchandise will be stored in his Customs-bonded warehouse in Philadelphia and will be withdrawn and delivered directly to the vessels in each of the above ports of exportation.

Law and analysis.—With respect to issue 1, section 112.25, Customs Regulations (19 CFR 112.25), provides that:

> A carrier or freight forwarder who has filed a carrier's bond, Customs form 3587, or a carrier who has filed a private carrier's bond, Customs form 3588, may be appointed or licensed as a Customs cartman or lighterman for a port for which such bond provides coverage, upon compliance with section 112.22. Investigation pursuant to section 112.23 may apply.

Prior to April 30, 1970, section 21.1(a), Customs Regulations, the predecessor of section 112.25, provided that the district director may appoint or license as a Customs cartman or lighterman any common carrier who has executed and filed a carrier's bond, Customs form 3587. T.D. 70–102 amended section 21.1(a), now section 112.25, in part, to the current text. T.D. 70–102 further noted that:

> Since the bond on Customs form 3587 or 3588 previously posted by a bonded freight forwarder or carrier includes the operations of a cartman or lighterman, section 21.1(a) is amended to provide that they may be so appointed or licensed.

Customs form 3588, private carrier's bond, required pursuant to 19 U.S.C. 1551 and section 112.12(b) (3), Customs Regulations (19 CFR 112.12(b) (3)), is designed to protect the Government in the same manner as Customs form 3587, carrier's bond, except that it is taken out by private bonded carriers. A "private carrier" is defined in section 112.1(g), Customs Regulations (19 CFR 112.1(g)), as a carrier of his own goods or merchandise.

Accordingly, a carrier who has filed a private carrier's bond may be appointed a Customs cartman for a port for which the bond provides coverage to cart its own imported merchandise upon compliance with

section 112.22 and without an additional cartman's bond. If, however, the private carrier will cart imported merchandise belonging to others, a cartman's bond on Customs Form 3855 will be required.

The second issue raised has been ruled upon by the Customs Service in a decision issued February 27, 1979 (BON–3–R:CD:D B, 209740),[1] copy enclosed. The holding in that case relative to private bonded carriers after a discussion of section 112.11(a)(4), Customs Regulations (19 CFR 112.11(a)(4)), is that the movements of private bonded carriers are restricted to those set forth in section 112.11(a)(4)(iii). The holding also noted that a recommendation to make the current regulations pertaining to designation of private carriers of bonded merchandise less restrictive has been prepared. A copy of the recommendation (BON–1–R:CD:D B, 209850, dated November 15, 1978) is also enclosed for your information. However, under existing regulations, the applicant is precluded from carrying his own bonded merchandise directly from his private-bonded warehouse to vessels berthed at neighboring ports under his private carrier's bond.

Holding.—1. A firm having a private carrier's bond may be issued a cartman's license to cart its own merchandise against the previously filed private carrier's bond without filing an additional cartman's bond.

2. Under the existing regulations, it would be necessary for the firm to be designated a common carrier in order to carry its own bonded merchandise from its private-bonded warehouse, located within the port limits of Philadelphia to vessels berthed in neighboring ports. A recommendation to make the existing regulations less restrictive in this regard has been prepared but has not at this time been approved or adopted.

(C.S.D. 79–463)

Carrier Control: Foreign-Built, U.S.-Registered, Fish-Processing Vessel; Coastwise Laws

Date: June 5, 1979
File: VES–7–R:CD:C
103842 BJF

This is in reply to your letter of January 26, 1979, in which you request replies to various questions. Your questions and our answers are set forth below.

1. What Customs laws and regulations are applicable, and how are they or would they be applied to foreign-built, American-registered, fish-processing vessels? The vessels receive fish from U.S. harvesting vessels beyond the territorial sea but within the Fishery Conservation

[1] Published in the CUSTOMS BULLETIN as C.S.D. 79–359.

Zone, process the catch into semifinished products while at sea, and then transport the product for landing at a U.S. port.

The first sentence is so broad that it is not practical to reply. Such vessels are subject to report of arrival, entry, and clearance laws, navigation laws, various enforcement statutes, and all pertinent regulations thereunder.

As to the second sentence, it sets the framework for the questions below:

a. Are the coastwise trading laws involved?

The coastwise laws are not involved because those laws (i.e., title 46, United States Code, sec. 883) apply to the transportation of cargo between points embraced by the coastwise laws. This would include points in the territorial sea but not the Fishery Conservation Zone.

b. Would there be any difference in treatment between situations where the processing vessel was owned and under the control of the same owner(s) as the catching vessel(s), or where there was completely separate ownership?

With respect to the coastwise laws, no, for the reason specified in the answer to *a.* above. Nor would the landing be prohibited by title 46, United States Code, section 251, which prohibits foreign-flag vessels from landing fish under certain circumstances.

c. Could bareboat or other possible charter arrangements affect the applicability of the laws?

No.

d. Would there be any difference in treatment if the processing vessel were owned by the U.S. Government and bareboat chartered to a private concern?

No.

e. If the application of Customs laws were to prevent or impair landing of fish by the processing vessels, are waivers or other exceptions available that would permit temporary pilot projects designed to determine feasibility?

Not applicable.

If we can be of further assistance, please advise.

(C.S.D. 79–464)

Foreign Trade Zones: Date or Time Privileged Foreign Merchandise is Dutiable

Date: June 5, 1979
File: FOR–2–08–R:CD:D L 210387

Issue.—Foreign merchandise is taken into a foreign trade zone (FTZ) and given the status of privileged foreign merchandise. If the

privileged foreign merchandise is then manipulated or manufactured in the FTZ by assembly or incorporation into another article, is it dutiable in its condition as of the date the application for privileged foreign merchandise was filed or in its condition at the time of actual entry for consumption or withdrawal from warehouse?

Facts.—A company in the United States intends to enter, for manufacture and assembly, foreign materials into a foreign trade subzone. The foreign materials will consist of parts, components, subassemblies, assemblies, modules, and engines for assembly. The company proposes to enter the foreign materials as privileged foreign merchandise, as provided in section 146.21, Customs Regulations (19 CFR 146.21). It is noted that each month there are approximately 4,000 inbound shipments and outbound shipments of approximately 2,500 assemblies.

The inquirer cites sections 146.21(c)(3)(i) and 146.21(d), Customs Regulations (19 CFR 146.21(c)(3)(i) and 146.21(d)) and interprets them to mean that the classification and value of the merchandise at time of entry into the subzone, upon appraisement and liquidation of the entry, is irrevocably established.

On the basis of this interpretation, the inquirer hypothesizes as follows: A part of an internal combustion engine, nonpiston type, classifiable under item 660.54, Tariff Schedules of the United States, dutiable at 5 percent ad valorem, and with a value of $1,000, is entered into the subzone as foreign-privileged merchandise. The part is assembled into a jet engine. When the engine incorporating this part is withdrawn from the subzone, a duty of $50 on the foreign-privileged merchandise will be due.

A binding ruling establishing the dutiable status of foreign-privileged merchandise is requested.

Law and analysis.—Section 3 of the Foreign Trade Zones Act, 48 Stat. 999, as amended (19 U.S.C. 81c), provides in part, "(T)hat whenever the privilege shall be requested and there has been no manipulation or manufacture effecting a change in tariff classification, the appropriate Customs officer shall take under supervision any lot or part of a lot of foreign merchandise in a zone, cause it to be appraised and taxes determined and duties liquidated thereon. Merchandise so taken under supervision may be stored, manipulated, or manufactured * * * and whether mixed or manufactured with domestic merchandise or not * * * be exported * * * or may be sent into Customs territory upon the payment of such liquidated duties and determined taxes thereon. If merchandise so taken under supervision has been manipulated or manufactured, such duties and taxes shall be payable on the quantity of such foreign merchandise used in the manipulation or manufacture of the entered article."

Section 146.21, Customs Regulations (19 CFR 146.21), is the regulation relating to privileged foreign merchandise in a zone. Subsection (3)(c)(i) of 146.21 provides that merchandise for which privileged foreign status is requested, "shall be subject to appraisement and tariff classification according to its condition and quantity, and to the rates of duty and tax in force, on the date of filing, in complete and proper form, the request for privileged foreign status * * *." Subsection (d) of 146.21 provides, "(T)hat a status as priviliged foreign merchandise and the consequent determination of taxes and liquidation of duties cannot be abandoned. The taxes and duty remain applicable to the merchandise even if changed in form by manipulation or manufacture * * *."

Section 146.48, Customs Regulations (19 CFR 146.48), provides, among other things, for the treatment of merchandise transferred from a zone which is composed in part of, or derived in part from, nonprivileged merchandise, domestic or foreign, and in part of or from privileged merchandise, domestic or foreign. Subsection (e) of 146.48 provides that, "(M)erchandise subject to the provisions of this section, upon transfer from a zone and entry for consumption * * * shall be subject to appraisement and tariff classification in accordance with its character and condition at the time of its constructive transfer to Customs territory and, except for any different rates applicable to any privileged foreign merchandise therein, to the rate or rates of duty and tax in force at the time entry for consumption * * * is made.

In general, foreign merchandise taken into a zone may be given the status of privileged foreign merchandise, upon proper application to the district director. The application must be made prior to transfer of the merchandise to Customs territory and prior to a manipualtion or a manufacture of the merchandise which effects a change in its tariff classification.

Upon acceptance of the application, the district director will have the merchandise classified and appraised, the taxes determined, and the duties liquidated. The taxes and liquidated duties are determined as of the date the application is filed.

Taxes and duties on privileged foreign merchandise are not payable unless and until it is transferred to Customs territory. The privileged foreign merchandise status, once attained, cannot be abandoned, even if the merchandise itself is changed in form by manipulation or manufacture. The exception to this no-change-of-status rule is that recoverable wastes derived from its manufacture or manipulation automatically receive the status of nonprivileged foreign merchandise (see section 146.23, Customs Regulations (19 CFR 146.23)).

In the situation posited, foreign-privileged merchandise is assembled, as a part, into another article. Upon withdrawal from the zone for

consumption, the foreign privileged merchandise incorporated into the new article is subject to the liquidated duties and determined taxes, as assessed in the liquidation of the zone Customs entry on the quantity of merchandise transferred.

Holding.—Foreign merchandise taken into a foreign trade zone and given, upon application, the status of foreign-privileged merchandise is dutiable upon withdrawal from the zone for consumption, even if changed in form by manipulation or manufacture, at the rate in force on the date of filing of the application for privileged foreign merchandise status. The only exception is that recoverable wastes derived from manufacture or manipulation of the privileged foreign merchandise automatically receive the status of nonprivileged foreign merchandise.

In the hypothetical case presented under "Facts" a part of an engine is entered into the subzone as foreign-privileged merchandise valued at $1,000 and dutiable at a rate of 5 percent ad valorem. Upon assembly into a jet engine and subsequent withdrawal from the subzone, a duty of $50 on the foreign-privileged merchandise will be due.

Insofar as this decision simply restates the provisions of the statute and Customs Regulations, it is provided for information only.

(C.S.D. 79-465)

Carrier Control: Use of Foreign-Built, U.S.-Documented Vessel in Passenger Cruises to a Port or Ports in the United States

Date: June 7, 1979
File: VES-4-R:CD:C
103862 DR

This ruling concerns the applicability of the U.S. navigation laws to the operation of a foreign-built, U.S.-documented vessel in passenger cruises between a West Indies port and one or more ports in the United States.

Issues.—A. Would the transportation of passengers under a voyage charter of a foreign-built, U.S.-documented vessel from a port in the West Indies to a port in the United States and return to the port in the West Indies be in violation of any law administered by the Customs Service?

B. Would the transportation of passengers under a voyage charter of a foreign-built, U.S.-documented vessel from a port in the West Indies to more than one port in the United States and return to the port in the West Indies be in violation of any law administered by the Customs Service?

Facts.—A Florida corporation which owns a foreign-built yacht proposes to take passengers under a voyage charter arrangement from St. Bartholomew's Island, French West Indies, on round-trip cruises touching the United States. The reference in your inquiry to your contacting the Coast Guard Documentation Branch indicates that it is intended to document the vessel under the laws of the United States. As you probably have been informed by that agency, title 46, United States Code, section 103, provides that a vessel licensed as an American yacht, which is found engaging in trade, shall be liable to seizure and forfeiture.

Law and analysis.—A. The Customs Service considers a vessel which is carrying persons under a charter, whereby operation of the vessel is retained by the owner of the vessel, i.e., a voyage or a time charter, as carrying passengers for hire and therefore engaged in trade, although the vessel may be chartered for pleasure purposes. A vessel being operated under such an arrangement, which arrives in the United States from a foreign country or which departs the United States for a foreign country, is considered by the Customs Service to be in the foreign trade. Passengers may, of course, disembark from the vessel and reboard for the return voyage to a foreign port without regard to the time spent ashore.

B. Passengers who arrive on a vessel from a foreign port and disembark at a U.S. port, without regard to the time spent ashore, then reboard the vessel and disembark at another such port would be considered to have been transported between ports or places in the coastwise trade if the vessel remains in the second or in a subsequent port for more than 24 hours. (See sec. 4.80a, Customs Regulations (19 CFR 4.80a)). It is our understanding that a vessel which is foreign built can, as a general rule, be documented under the laws of the United States to engage only in the foreign trade.

Holding.—A. There is no law administered by the Customs Service which would prohibit a foreign-built vessel of either U.S. or foreign documentation from arriving in the United States, disembarking passengers and subsequently taking passengers back on board for a return voyage to a foreign country.

B. Generally, a foreign-built vessel cannot be documented under the laws of the United States to engage in the coastwise trade. Therefore, the vessel under consideration may not land at a subsequent U.S. port the passengers who reboarded or boarded the vessel at the first U.S. port of arrival if the vessel is to remain in the subsequent port for more than 24 hours.

C. A vessel which arrives in the United States in trade is subject to the requirements of reporting arrival (19 U.S.C. 1433) and making

entry (19 U.S.C. 1434, 1435), including the payment of tonnage taxes (46 U.S.C. 121, 141), and the presentation of a manifest (19 U.S.C. 1431). The vessel may also require a permit to proceed between U.S. ports (19 U.S.C. 1443–1445; 46 U.S.C. 313–315), and obtain clearance upon departure for a foreign port (46 U.S.C. 91). These requirements are set forth in detail in part 4 of the Customs Regulations (title 19, Code of Federal Regulations). It is suggested that the Customs authorities at the vessel's intended first port of arrival be contacted with respect to particulars.

(C.S.D. 79–466)

Carrier Control: Applicability of Coastwise Laws to Foreign-Built, U.S.-Registered, Fish-Processing Vessel

Date: June 7, 1979
File: VES–7–02–R:CD:C
103889 JM

This is in reference to your letters dated February 26 and March 30, 1979, concerning the interpretation of laws administered by the U.S. Customs Service with regard to the operation of a foreign-built, U.S.-registered, fish-processing vessel.

You ask several questions concerning the impact of the coastwise laws on the subject vessel. Your questions are set forth and answered in the order presented in your letter of February 26, 1979:

1. What does "in the United States" mean? Particularly, if the loading or the unloading or both the loading and unloading occurred beyond the territorial sea, i.e., more than 3 miles from the territorial sea baseline, would coastwise trade occur?

Since your question concerns coastwise trade, the term "in the United States" includes the territorial waters of the United States. While title 46, United States Code, section 883, would prohibit transportation of fish or fish products on the foreign-built vessel between points in the territorial waters of the United States, this statute would not prohibit transportation of fish or fish products from a point within the territorial waters to a point outside the territorial waters. If both the loading and unloading occur outside the territorial waters, the coastwise laws do not apply.

2. What is encompassed within the meaning of the word "discharge"? In particular, if a vessel loads fish at one point in the United States, moves to a second point in the United States, and then offloads the fish directly to a second vessel which then moves the fish

to a foreign port, has coastwise trade occurred? Would the answer be different if the cargo were discharged at the second point to a dock or port facility in the United States and then placed aboard an international ocean carrier for shipment to a foreign port?

As stated above, title 46, United States Code, section 883, prohibits transportation of the fish or fish products between points within the territorial waters of the United States. The answer remains the same if the cargo is discharged at a dock or port facility. The word "discharge" encompasses the offlading to another vessel or to a dock or port facility.

3. If merchandise for use aboard the vessel during fish processing operations, i.e., packing supplies, is taken on board a vessel in the United States, moved to a second point in the United States, and discharged for storage pending later use aboard the vessel, has coastwise trade occurred?

Since title 46, United States Code, section 883, prohibits the transportation of merchandise on foreign-built vessels between points in the United States, the proposed movement is not permissible.

4. If fish is taken aboard a vessel at one point in the United States and then the vessel moves to a second point in the United States for emergency repairs (but none of the fish is taken off and no additional fish loaded), may the vessel return to the first location and unload without violating the coastwise trade laws?

Movement of the vessel within territorial waters would not constitute a violation of the coastwise laws provided merchandise (fish or fish products) is not transported between points in the territorial waters, that is, loaded at one point and offloaded at another point within territorial waters. The fish-processing vessel would be prohibited by title 46, United States Code, section 883, from taking aboard fish at one point in the territorial waters of the United States and offloading the processed fish at another point in the territorial waters.

5. If a vessel takes on fish at one location in the United States from a series of U.S.-flag fishing vessels and then discharges its cargo at that same location to a second vessel which either moves the cargo to a foreign port or, by virtue of coastwise privileges in the second vessel, transports the cargo to a second point in the United States, has the offloading to the second vessel completed a chain of coastwise trade?

Since no transportation on the foreign-built vessel occurs, there would be no violation of the coastwise laws.

6. With regard to question No. *2* above, has the vessel engaged in the fishing trade? In particular, if the vessel receives fish at a remote location from a series of American-flag fishing vessels unrelated in

ownership to the processing vessel and then moves the fish to a U.S. port for immediate shipment to a foreign port, has the vessel engaged in the fishing trade?

We are unaware of a definition for the term "fishing trade." Title 19, Code of Federal Regulations, section 10.78(b), defines an American fishery as a fishing enterprise conducted under the American flag by vessels of the United States on the high seas or foreign waters in which such vessels have the right by treaty or otherwise, to take fish or other marine products and may include a shore station operated in conjunction with such vessels by the owner or master thereof.

As stated in our answer to question *2*, the subject vessel could not receive fish at a point within the territorial waters of the United States and unlade the fish or fish products at a U.S. port, regardless of the ultimate destination of the fish or fish products. If the fish are laden aboard the subject processing vessel at a point outside the territorial waters of the United States, the vessel documented under the laws of the United States could unlade the fish at a port in the United States.

(C.S.D. 79–467)

Carrier Control: Applicability of Customs and Navigation Laws to High Seas Oil Port

Date: June 8, 1979
File: VES–3–17–R:CD:C JM
103020 102428

This ruling concerns the application of Customs and navigation laws to deepwater ports.

Issues.—1. Are foreign articles used in the construction of the offshore complex subject to applicable entries and taxes?

2. Title 33, United States Code, section 1518(d) states that the Customs laws administered by the Secretary of the Treasury shall not apply to deepwater ports. Do the navigation laws administered by the Secretary of the Treasury and the Secretary of Commerce apply to deepwater ports?

3. When and by whom will a manifest for cargo arriving at a deepwater port be presented to Customs?

4. When will cargo discharged from vessels at deepwater ports be treated as imported merchandise?

5. What are entry and bond requirements for launches, helicopters, etc., lightering cargo from the deepwater port to a U.S. port?

6. Are vessels at the deepwater port from foreign entitled to the privileges of title 19, United States Code, section 1309? Are lightering vessels entitled to these privileges?

Facts.—A deepwater port is being built 20 miles off the Louisiana coast. Tankers arriving from foreign countries will discharge oil at the deepwater port. Large-diameter, buried pipelines will carry the oil from the deepwater port to an onshore storage area. A Customs station will be established near the shore facility. Customs field officers have requested information concerning Customs procedures to be followed in connection with the deepwater port.

Law and analysis.—1. For Customs purposes, relevant portions of the Deepwater Port Act of 1974 are as follows:

33 U.S.C. 1502(10) states:

> "Deepwater port" means any fixed or floating manmade structures other than a vessel, or any group of such structures, located beyond the territorial sea and off the coast of the United States and which are used or intended for use as a port or terminal for the loading or unloading and further handling of oil for transportation to any State, except as otherwise provided in section 23 (title 33, USC, section 1522). The term includes all associated components and equipment, including pipelines, pumping stations, service platforms, mooring buoys, and similar appurtenances to the extent they are located seaward of the high water mark.

33 U.S.C. 1503 states in pertinent part:

> A deepwater port, licensed pursuant to the provisions of this act (title 33, USC, sections 1501–1524), may not be utilized—
>
> (1) for the loading and unloading of commodities or materials (other than oil) transported from the United States, other than materials to be used in the construction, maintenance, or operation of the high seas oil port, to be used as ship supplies, including bunkering for vessels utilizing the high seas oil port.
>
> (2) for the transshipment of commodities or materials, to the United States, other than oil,
>
> (3) except in cases where the Secretary (of Transportation) otherwise by rule provides, for the transshipment of oil, destined for locations outside the United States.

33 U.S.C. 1512(b) states:

> All U.S. officials, including those officials responsible for the implementation and enforcement of U.S. laws applicable to a deepwater port, shall at all times be afforded reasonable access to a deepwater port licensed under this act (title 33, U.S.C., secs. 1501–1524) for the purpose of enforcing laws under their jurisdiction or otherwise carrying out their responsibilities. Each such official may inspect, at reasonable times, records, files, papers, processes, controls, and facilities and may test any

feature of a deepwater port. Each inspection shall be conducted with reasonable promptness, and such licensee shall be notified of the results of such inspection. (January 3, 1975, Public Law 93–627, sec. 13, 36 Stat. 2139).

33 U.S.C. 1517, entitled "Liability" states:

(a)(1) The discharge of oil into the marine environment from a vessel within any safety zone, from a vessel which has received oil from another vessel at a deepwater port, or from a deepwater port is prohibited.

(2) The owner or operator of a vessel or the licensee of a deepwater port from which oil is discharged in violation of this subsection shall be assessed a civil penalty of not more than $10,000 for each violation. No penalty shall be assessed unless the owner or operator or the licensee has been given notice and opportunity for a hearing on such charge. Each violation is a separate offense. The Secretary of the Treasury shall withhold, at the request of the Secretary (of Transportation), the clearance required by section 4197 of the Revised Statutes of the United States, as amended (46 U.S.C. 91), of any vessel the owner or operator of which is subject to the foregoing penalty. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to the Secretary (of Transportation).

33 U.S.C. 1518, entitled "Relationship to other laws" states in pertinent part:

(a)(1) The Constitution, laws, and treaties of the United States shall apply to a deepwater port licensed under this act (title 33, U.S.C., secs. 1501–1524) and to activities connected, associated, or potentially interfering with the use or operation of any such port, in the same manner as if such port were an area of exclusive Federal jurisdiction located within a State. Nothing in this act (title 33, U.S.C., secs. 1501–1524) shall be construed to relieve, exempt, or immunize any person from any other requirement imposed by Federal law, regulation, or treaty. Deepwater ports licensed under this act (title 33, U.S.C., secs. 1501–1524) do not possess the status of islands and have no territorial seas of their own.

(d) The Customs laws administered by the Secretary of the Treasury shall not apply to any deepwater port licensed under this act (title 33, U.S.C., secs. 1501–1524), but all foreign articles to be used in the construction of any such deepwater port, including any component thereof, shall first be made subject to all applicable duties and taxes which would be imposed upon or by reason of their importation if they were imported for consumption in the United States. Duties and taxes shall be paid thereon in accordance with laws applicable to merchandise imported into the Customs territory of the United States.

2. *Effect of the Outer Continental Shelf Lands Act.*—We first wish to make several comments concerning the Outer Continental Shelf Lands Act of August 7, 1953 (43 U.S.C. 1333). This act provides in pertinent part that the Constitution and laws and civil and political

jurisdiction of the United States are extended to the subsoil and seabed of the Outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the Outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State.

Treasury Decision 54281 provides that under section 4 of that act, the Customs and navigation laws, including the laws relating to the entry and clearance of vessels, are extended to mobile rigs only during the period they are secured to or submerged onto the seabed of the shelf for *drilling operations*. Although the deepwater port (name of port) would be a fixed structure and constructed for the purpose of transporting resources from it, those resources would not be resources of the subjacent subsoil or seabed or of the subsoil and seabed adjacent thereto. Accordingly, the Outer Continental Shelf Lands Act provides no statutory basis to support the Deepwater Port Act.

3. *Applicability of the navigation laws to the deepwater port.*—As cited above, the Constitution, laws, and treaties of the United States shall apply to a deepwater port licensed under the Deepwater Port Act. However, the act explicitly states that the Customs laws administered by the Secretary of the Treasury shall not apply to any such deepwater port. What is crucial, for Customs purposes is the fact that there is no mention of the applicability of the navigation laws. The legislative history of the Deepwater Port Act is somewhat complicated. For Customs purposes, it is necessary to point out that specific language relating to the applicability of the navigation laws was drafted in the administration bill introduced as H.R. 7501 and S. 1751. The language stated:

> * * * The Customs and navigation laws administered by the Bureau of Customs, except those specified * * * shall not apply to any deepwater port facility licensed under this Act; * * *

However, this language was not included in the substitute bill recommended by a joint conference committee and agreed to by the Senate and House on December 17, 1974, and signed into law on January 3, 1975. The enacted legislation, as cited above, is silent on the applicability of the navigation laws generally and does not specifically enumerate any navigation law which would be applicable to the deepwater port except for 46 U.S.C. 91, discussed bellow. We are unable to determine the basis for the revision of the language in the administration bill by the joint conference committee and what the intent of the Congress is with regard to the applicability of the navigation laws.

In the absence of any guidance from the Congress, it is necessary for Customs to proceed administratively and determine by the rules of statutory construction what we believe is the intent of the Congress.

It is our opinion that the deletion of the words "and navigation" by the Congress from the language of the administration bill cited above indicates an intent that the navigation laws do apply, at least to the extent practicable given the circumstances surrounding the unique structures of a deepwater port.

Furthermore, the specific reference to 46 U.S.C. 91 in section 1517 of the Deepwater Port Act, relating to the withholding of clearance in cases of oil spills, in our view is a strong indication of the intent of Congress that the navigation laws apply to a deepwater port.

4. *Statutes considered to be navigation laws.*—Whether a particular statute is a Customs law or a navigation law, or a combination thereof, has been considered previously by headquarters in matters relating to the Virgin Islands. Such consideration was undertaken in order to interpret Executive Order No. 9170, dated May 21, 1942, which generally provided that all the navigation and vessel inspection laws of the United States are applicable to the Virgin Islands, subject to several exceptions (the most notable being the coastwise laws). As a result, it has been determined that in addition to the applicable statutes codified in title 46, United States Code, including the coastwise laws (46 U.S.C. 289 and 883), the following sections of the Tariff Act of 1930 contain provisions which are in whole or in part navigation laws: Sections 401, 431 to 448, inclusive, 581, 583 to 588, inclusive, 605, 613, 614, and 618 to 628, inclusive.

5. *Construction of the deepwater port.*—The act explicitly states, as cited above, that all foreign articles to be used in the construction of the deepwater port, including any component thereof, shall be made subject to all applicable duties and taxes. Accordingly, a consumption entry would be required to be filed, a permit to unlade such merchandise taken to the deepwater port facility must be obtained, and other Customs procedures relating to the entry of merchandise would be applicable. Moreover, the act is clear with regard to merchandise brought to the deepwater port and not used in the construction of that port. The Customs laws shall not apply. It is our opinion that foreign articles, such as food and supplies, brought to the deepwater port and not used in the construction of the port, but consumed there or which otherwise remain there, are not dutiable. Also, foreign articles brought to the deepwater port after completion of the construction of the deepwater port and consumed there or which otherwise remain there similarly are not dutiable.

6. *Entry of oil into the United States.*—We next discuss the question of entry of the oil into the United States. It is our opinion that for Customs purpose, oil is not landed in the United States until the oil arrives within the territorial waters of the United States. Thus, under this view, a particular shipment is not landed until the total quantity of that shipment has arrived within the territorial waters of the United States. The oil does not land in the United States, for Customs purposes, in any of the following instances:

(1) When the oil entered the line between the vessel and the deepwater port;

(2) When the oil is at the deepwater port; or

(3) When the oil has entered the line between the deepwater port and the United States.

The basis for this decision is that section 1518 of the Deepwater Port Act provides that, except for foreign articles used in the construction of the deepwater port, the Customs laws shall not apply to any deepwater port. Until the oil arrives within the territorial waters of the United States through the pipeline, it can be pumped out of the pipeline or taken off the deepwater port and exported without the necessity of Customs supervision. Accordingly, we believe that section 19(d) clearly indicates that the oil has not landed in the United States until it arrives within the territorial waters of the United States.

We have no objections to receiving the measuring data and samples taken at the deepwater port as representative of the shipment. In such instances, entry would be made and duty would be assessed on the measurement taken at the offshore pumping platform. If any of the oil brought to the platform is lost, destroyed, or exported from the platform or from the line between the deepwater port and the United States prior to its arriving in the United States, an allowance for such losses would be made in accordance with section 158.8 of the Customs Regulations only if Loop Inc. satisfies Customs that such losses or diversions actually occurred, and identifies the particular shipment to which such losses apply.

We wish to emphasize that this decision does not contradict our ruling of May 26, 1978, to you, whereby we stated that for Customs purposes the crude oil coming in from a deepwater port is not landed in the United States until the oil arrives in the United States. Therefore, Customs could not require the importer to submit measuring data taken at the deepwater port and could only require the importer to submit measuring data taken in the United States. However, in this case the importer has voluntarily requested Customs to accept the measuring data taken at the deepwater port and we have the privilege of accepting such request. By submitting such data as the quantity determination for his entry, the importer is bound by this data unless

he can satisfy us through documentary proof that losses occurred after such readings were taken but prior to the arrival of the merchandise in the United States.

7. *Arrival, entry, and clearance requirements.*—The question of whether, if at all, the arrival, entry, and clearance statutes apply to the deepwater port has been a topic of much concern at headquarters. We fully appreciate the operational necessity of maintaining control of the traffic of vessels to and from the deepwater port, as well as the activity on the deepwater port itself.

We believe that the movement of a vessel from the deepwater port to a point outside the U.S. jurisdiction on the high seas would not necessitate foreign clearance in light of 46 U.S.C. 91, which requires clearance only of a vessel bound to a foreign port, and section 4.60(e), Customs Regulations, which provides that no vessel shall be cleared for the high seas. If a vessel departs from the deepwater port "bound to a foreign port," pursuant to 46 U.S.C. 91, clearance would be required.

Therefore, we could enforce section 1517 of the Deepwater Port Act (by withholding clearance "required" by 46 U.S.C. 91 to a vessel where there is a discharge of oil) only where such a vessel would depart from the deepwater port "bound to a foreign port." However, this enforcement technique of denying clearance would not apply where a vessel would depart from the deepwater port bound for the high seas.

We believe that a vessel arriving at a deepwater port is subject to varying arrival and entry requirements. If a vessel, American or foreign, arrives at the deepwater port from a foreign port or place, it would be required to report arrival pursuant to 19 U.S.C. 1433 and make entry pursuant to 19 U.S.C. 1434 and 1435, respectively. If such movement originates from a point on the high seas, a foreign vessel is required to report its arrival and make entry pursuant to 19 U.S.C. 1433 and 1435, respectively. An American vessel similarly is required to report its arrival pursuant to 19 U.S.C. 1433 if it would be carrying bonded merchandise or foreign merchandise for which entry has not been made, although it would not be required to make entry as a vessel pursuant to 19 U.S.C. 1434 since it would not be arriving from "a foreign port or place." We think support for the conclusion that 19 U.S.C. 1433 is applicable in all such circumstances is that reporting shall be made at "any port or place within the United States at which such vessel shall come to." Under the provisions of the Deepwater Port Act, the deepwater port is to be considered "as if such port were an area of exclusive Federal jurisdiction within a State."

Title 19, United States Code, section 1447, provides, generally, that a vessel may not be entered or cleared other than at a port of

entry. However, it goes on to state that upon good cause being shown, the Commissioner of Customs may permit entry at a place other than a port of entry, under such conditions as he shall prescribe. Further, section 1.3, Customs Regulations, makes provision for such entry and clearance to take place upon the authorization of the district director concerned. This authorization may be granted only upon condition that the district director is notified in advance of the arrival of the vessel, that the vessel is under such Customs supervision as he may deem necessary, that all applicable Customs and navigation laws and regulations are complied with, and that the salary and expenses of the Customs officer for such time as is required to be devoted to entry and clearance work shall be reimbursed to the Government by the owner, master, or agent of the vessel.

We are advised that seadock employees would board the foreign vessels, presumably in many cases prior to the vessel being placed in security by Customs. Notwithstanding the inapplicability of the Customs laws, we believe the presence of a Customs officer is necessary to properly administer the arrival, entry, and clearance requirements applicable to the deepwater port. As indicated above, the act specifically provides that United States officials shall be afforded reasonable access to a deepwater port license under this act for the purpose of enforcing laws under their jurisdiction or otherwise carry out their responsibilities. Therefore, we believe there is an adequate authority for a Customs officer, in his discretion, to deny a seadock employee from boarding and departing a vessel prior to the time the vessel is placed in security by that officer.

8. *Transportation between the United States and the deepwater port.*— We envision the constant movement of vessels transporting passengers and merchandise between United States ports and the deepwater port. It is our opinion, as indicated above, that the coastwise laws are applicable to the deepwater port. Accordingly, we believe that the transportation of passengers and merchandise between points within, and the territorial waters surrounding, the United States, as well as applicable territories and possessions thereof, embraced within those laws and the deepwater port must be accomplished by a vessel qualified to engage in the coastwise trade. For example, a service vessel which transports supplies, equipment, or workers between points embraced within the coastwise laws and the deepwater port would be considered as operating in the coastwise trade and must meet the statutory requirements entitling it to engage in such trade.

We believe that a vessel departing from a U.S. port to the deepwater port is not required to obtain clearance pursuant to 46 U.S.C. 91 since it is not "bound to a foreign port." However, vessels under

foreign flag or vessels of the United States moving with residue foreign cargo from a U.S. port to the deepwater port and back to a U.S. port must obtain a permit to proceed.

9. *Restrictions on the use of the deepwater port.*—We note that in accordance with section 1503 of the Deepwater Port Act, cited above, a deepwater port licensed under this act may not be utilized for:

1. Loading and unloading of commodities or materials (other than oil) transported from the United States subject to certain exceptions.

2. The transshipment of commodities or materials to the United States, other than oil.

3. The transshipment of oil destined for locations outside the United States, except where the Secretary of Transportation so provides.

10. *Vessels entitled to bonded supplies under 19 U.S.C. 1309.*—Title 19, United States Code, section 1309, provides for withdrawal of supplies from a bonded warehouse free of duty and internal revenue tax for use aboard certain vessels and aircraft of the United States. Those tankers employed in bringing the oil to the deepwater port from a foreign country are entitled to the free withdrawal provisions of section 1309 as these vessels are in the foreign trade. In a decision dated December 8, 1977, copy enclosed, we held that vessels lightering Alaskan oil from a storage vessel on the high seas is engaged in trade between Alaska and another port of the United States and thus entitled to the free withdrawal privileges of section 1309. For the purposes of section 1309 consideration, the vessels lightering bonded stores and equipment between the deepwater port and the United States are engaged in trade between a foreign port and a port in the United States.

Holding.—1. Foreign articles used in the construction of the deepwater port are subject to duty (33 U.S.C. 1518(d)).

2. While Customs laws administered by the Secretary of the Treasury are not applicable to deepwater ports, navigation laws are applicable to deepwater ports.

3. A manifest will be produced by the master of a vessel arriving at a deepwater port at the time entry of the vessel is made.

4. A shipment of oil is not landed in the United States until the total quantity of that shipment has arrived within the territorial waters of the United States.

5. Vessels lightering cargo between U.S. ports and the deepwater port will be governed by the laws applicable to vessels operating in the coastwise trade.

6. Vessels transporting oil from a foreign port to the deepwater port and vessels lightering bonded stores and equipment between the

deepwater port and ports in the United States are entitled to the free withdrawal privileges of 19 U.S.C. 1309.

(C.S.D. 79–468)

Drawback: Date Drawback Entry Considered Filed

Date: June 8, 1979
File: DRA–1–R:CD:D NK
210320

Issue.—Whether a drawback entry is "filed" on the date the entry is received by Customs or on the date the entry is deposited in the U.S. mail.

Law and analysis.—Section 22.13(a) of the Customs Regulations requires for the completion of a drawback claim that a drawback entry and certificate of manufacture be filed within 3 years after the date the articles are exported. The regulation does not prescribe the means for transmitting the document to Customs. A drawback claimant may select to transmit the entry document by mail, special messenger, or other means.

However, the term "filed" under these circumstances means that the document is received by Customs.

Further comment.—No facts were presented with the request for advice. Therefore, the possible applicability of T.D. 53961(1) is noted. This decision generally provides that when the last day for the computation of time limits in which to file a document (such as a drawback entry) falls on a Saturday, Sunday, or holiday, the performance of the act shall be considered timely if done on the first succeeding day on which the customhouse is open for general Customs business.

Holding.—A drawback entry is "filed" the date it is received by Customs.

(C.S.D. 79–469)

Entry: Eligibility of Foreign-Registered Aircraft Engaged in the Foreign Trade for Duty-Free Exemption; 19 U.S.C. 1309(a)(3)

Date: June 11, 1979
File: CON 13–02–R:E:E
710552 M

This ruling concerns the eligibility of a foreign-registered aircraft, arriving and departing with passengers and cargo, which is diverted during its stay in the United States for training purposes, for the duty-free exemption under 19 U.S.C. 1309.

Facts.—A foreign commercial airline has established a training facility for its flight crew in the United States. The training is of either 1 week or 2 weeks' duration, depending on the nature of the training.

The airplanes which are designated by the foreign airline for use in training arrive at a port of entry in the same manner as any of its other airplanes carrying passengers and cargo. After its arrival, the navigational unit which is needed only for overseas flights is removed. The plane then proceeds to its training site. During its stay at the training site, the plane is given a routine checkup and any necessary repairs and maintenance are made. In addition, certain items, such as tires or fuel, are placed on the plane during training and destroyed or used during training.

Once the training period is over, the plane is refitted for overseas flight. For instance, a navigational unit is transferred from an incoming plane under continuous Customs custody or is withdrawn from warehouse or continuous Customs custody for insertion in the plane when refitted for overseas flight. That plane then departs from the training site to an American city, usually Chicago or New York, where it picks up passengers and cargo for a flight to a foreign country.

Issue.—Is the airplane which is diverted for training purposes entitled to the duty-free exemptions for supplies and equipment under section 309 of the Tariff Act of 1930, as amended (19 U.S.C. 1309)?

Law and analysis.—Section 309(a)(3) of the Tariff Act of 1930, as amended (19 U.S.C. 1309(a)(3)), in pertinent part, provides that a foreign-registered aircraft is entitled to supplies (including equipment), ground equipment, maintenance, or repair of the aircraft when actually engaged in foreign trade. The provisions of section 10.59 (a) and (d) of the Customs Regulations provide, in effect, that for an aircraft to be engaged in foreign trade it must either be transporting passengers or cargo to or from a foreign port or must be making a positioning flight from one port of entry without passengers or cargo to another port of entry where passengers or cargo will be laden for carriage to a foreign country.

If the airline were flying its airplanes into the United States from the foreign country without passengers or cargo for the sole purpose of training its flight crew in the United States, the airplane would not be engaged in "foreign trade" within the meaning of section 309 of the Tariff Act of 1930, as amended (19 U.S.C. 1309) and would therefore not be entitled to the duty-free exemptions under that section. However, in this case, the airplanes are arriving carrying passengers and cargo and are leaving carrying passengers and cargo, but are diverted for a 1-week or 2-week training period.

Therefore, we believe that the repairs, supplies, and equipment can be categorized and treated as follows:

(1) Those items, such as the navigational unit, which are placed on the airplane after training and are needed for the overseas return flight. These items, of which the navigational unit is a prime example, do qualify for section 309 duty exemption because these items are needed for the carriage of passengers and cargo in "foreign trade";

(2) Those items, such as a rudder or other such parts of the plane, which may be placed on the plane after its arrival or during the training period. These items are needed for both the training and the overseas flight and since the purpose is so intertwined, we believe that these items would qualify for duty-free exemption under section 309; and

(3) Those items, such as tires placed on the plane during the training period and worn out during such training period or fuel taken on by the plane during the training period and used by the plane during such training period, would not qualify for the duty-free exemption under section 309 since these items were used exclusively in training.

Holding.—Except for those items placed on the plane during the training period and used exclusively during the training period, the foreign-registered aircraft arriving and departing with passengers and cargo would be entitled to the duty-free exemption under 19 U.S.C. 1309, even though it is diverted during its stay in the United States for training purposes.

(C.S.D. 79–470)

Marking: Country-of-Origin Marking of Rosebushes of U.S. Origin Processed in Canada and Returned

Date: June 11, 1979
File: MAR–2–05 R:E:E
710045 AH

This ruling concerns (1) the country-of-origin marking requirements applicable to rosebushes grown in the United States, processed and packaged in Canada, and shipped back to the United States for resale, and (2) country-of-origin marking requirements applicable to Canadian-grown shrubs to be exported to the United States.

Issue.—Whether or not a country-of-origin marking label containing the name and address of a Canadian dealer affixed to packaged U.S.-grown rosebushes that are packaged and processed in Canada would be misleading and deceptive to the ultimate purchaser in the United States as to the origin of this product.

Facts.—The rosebushes in question are grown in the United States and sent to Canada where they will be pruned, waxed, and packaged in cellophane. After undergoing such process some of them will be

shipped back to the U.S. market for retail sale. The Canadian dealer also proposes to export shrubs grown in Canada to the United States.

The packages for these rosebushes and shrubs will bear a label containing the name and address of the Canadian dealer.

Law and analysis.—Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), requires that every article of foreign origin (or its container) imported into the United States shall be marked in a legible and conspicuous manner to indicate the English name of the country of origin to the ultimate purchaser in the United States, with certain exceptions.

19 U.S.C. 1304(a)(3)(J) and section 134.33, Customs Regulations (19 CFR 134.33), provide for an exception from the country-of-origin marking requirement for "plants, shrubs, and other nursery stock," among other articles. In the case of any article excepted from individual marking under these provisions which is imported in a container that reaches an ultimate purchaser in the United States, the container is required to be marked to indicate the origin of the contents.

Holding.—In accordance with section 134.46 of the Customs Regulations, it is the opinion of this office that the outermost container for the rosebushes in question bear a legible and conspicuous country-of-origin marking such as "Grown in the United States, Pruned, Waxed, and Packaged in Canada," and must appear in close proximity to the name and address of the Canadian dealer to avoid misleading the ultimate purchaser as to the origin of its contents.

In the instance of Canadian-grown shrubs exported to the United States a marking such as "Grown in Canada" along with the name and address of the Canadian dealer will meet the country-of-origin marking requirements set forth in 19 U.S.C. 1304.

(C.S.D. 79–471)

Foreign Trade Zones: Admission of Quota-Class Merchandise

Date: June 19, 1979
File: FOR–1–R:CD:D L 210412

Issue.—Do quota restrictions affect the admission of quota-class merchandise into a foreign trade zone (FTZ)? Does it make any difference if the quota-class merchandise is admitted with the status of privileged or nonprivileged foreign merchandise?

Facts.—An inquirer proposes to import into the FTZ at Mayaquez, P.R., stainless-steel wire rods which will be remanufactured in the FTZ by drawing into stainless-steel wire of various diameters. Item

923.23, Tariff Schedules of the United States, provides that wire rods of stainless steel of the types provided for in items 608.76 and 608.78 are subject to quota restrictions pursuant to Presidential Proclamation 4445 (June 11, 1976) and 4477 (November 16, 1976). Although full details of the proposed remanufacturing operation are not given, it does not appear that stainless-steel wire of various diameters is presently subject to quota restrictions upon entry into the Customs territory of the United States.

Law and analysis.—The Foreign Trade Zones Act of 1934, as amended (19 U.S.C. 81(c)), provides in part that foreign and domestic merchandise may be entered into a FTZ, manufactured or manipulated, and exported to a foreign country without being subject to the Customs laws of the United States. The quotas imposed by Presidential Proclamations 4445 and 4477 do not restrict entry of merchandise into the FTZ nor do they affect the exportation of products from a FTZ to foreign countries.

The Customs Service has held consistently that articles manufactured in FTZ's are products of the zones rather than of the foreign countries from which the component materials are obtained. Whether or not a quota or restrictive trade agreement applies to a product entered into the United States from a FTZ, however, may depend upon the specific component materials and its tariff classification, as well as on the language of the particular quota or agreement determined to be applicable. If the language of the quota or agreement encompasses articles produced in the U.S. FTZ's the Customs Service will enforce it and prohibit entry.

With respect to the status of the stainless-steel wire rods in the FTZ, if they are taken into the FTZ as nonprivileged foreign merchandise and nothing is done to them while in the zone to affect their tariff classification, the quota restrictions fixed in Presidential Proclamations 4445 and 4477 would be applicable to the stainless-steel wire rods when they are withdrawn from the zone for consumption.

If the stainless-steel wire rods are taken into the FTZ as nonprivileged foreign merchandise and there used in the manufacture of stainless-steel wire, the wire would on withdrawal for consumption be classified as stainless-steel wire and dutiable as such rather than as stainless-steel wire rods. Under this situation no stainless-steel wire rods would be entered, or withdrawn from warehouse, for consumption and consequently no quota considerations would be involved.

If the stainless-steel wire rods taken into the FTZ, upon application, are given the status of privileged foreign merchandise and thereafter used in the zone in the manufacture of stainless-steel wire, the taxes and duties determined to be due and the liquidation of duties remain applicable to the merchandise even if changed in form by manipula-

tion or manufacture. Accordingly, if a privileged status is acquired for the stainless-steel wire rods, duties would be assessed on the stainless-steel wire when withdrawn into Customs territory measured by the liquidated duty on the applicable portion of the imported stainless-steel wire rod used, with the allowance for waste provided for in the Foreign Trade Zones Act. There would be no charge against the quota. Of course, the privileged foreign stainless-steel wire rod must be separately identifiable and only to the extent that the identity is preserved would the benefit of the privileged foreign status be obtained when the stainless-steel wire is brought into Customs territory.

It is further noted that the Foreign Trade Zones Board has authority to regulate activities which may be conducted in an FTZ. It has used this authority to prohibit operations which circumvent the laws administered by any department of the Government. We suggest that you correspond directly with the Executive Secretary of the Foreign Trade Zones Board, U.S. Department of Commerce, Washington, D.C. 20230, to inquire whether any other quotas or trade restrictions may affect the proposed foreign trade operation you wish to establish.

A copy of part 146 of the Customs Regulations (19 CFR 146), which governs the admission of merchandise into an FTZ, manufacture in the zone, exportation of products from the zone, and transfer of products from the zone to the United States is enclosed.

Holding.—Goods may move into an FTZ without being subject to quota or other restraints. Any foreign merchandise properly in a zone has the status of nonprivileged foreign merchandise unless an application for privileged foreign status has been made and accepted. Accordingly, the status of privileged or nonprivileged foreign merchandise does not affect the admission of quota-class merchandise into an FTZ.

(C.S.D. 79-472)

Drawback: Abstract of Manufacturing Records

Date: June 19, 1979
File: DRA-1-09-R:CD:D B 210425

Issue.—What is meant by the phrase, "As shown by an abstract of manufacturing records," which appears on many drawback approval letters?

Facts.—Contained in many drawback proposals, under the "Basis of Claim for Drawback" section, is the phrase: "Used in, as shown by an abstract of manufacturing records." A drawback consultant states that field personnel in Customs are interpreting this language, which

is also contained on many drawback approvals issued by the field and headquarters, to require an abstract in addition to the certificate of manufacture (C.M.—Customs form 7577 A or B) or the combined certificate of manufacture and drawback entry (Customs form 7575 A or B), which a claimant files in order to obtain drawback under an existing rate.

Law and analysis.—An abstract is a summary of the original document(s). For example, an abstract of a realty title contains the pertinent legal points of the deed in issue, i.e., parties, granting clause, date, witnesses, seals.

Section 22.13, Customs Regulations, requires that a certificate of manufacture and drawback entry (Customs form 7575) or a certificate of manufacture and delivery (Customs form 7577) be filed within 3 years of the exportation of articles upon which drawback is claimed. These forms, among other information, list the date(s) of importation and manufacture of the exported articles. Thus, the information required in an abstract would be found on a properly completed Customs form 7575 or Customs form 7577.

Holding.—When they contain all the necessary information, certificates of manufacture and delivery and/or certificates of manufacture and drawback entry are considered "abstracts of manufacturing records."

(C.S.D. 79-473)

Drawback: Refund of Internal Revenue Taxes; 19 U.S.C. 1313 (a) and (b)

Date: June 19, 1979
File: DRA-1-09-R:CD:D B 210468

Issue.—Does the Customs Service have legal authority to refund as drawback internal revenue taxes paid on imported distilled spirits which are reduced in proof and exported?

Facts.—Legal Determination 3740-34 of October 3, 1978 (WAR-4-02-R:CD:D S 209462)[1] holds that drawback is payable upon the exportation of distilled spirits reduced in proof, provided there is compliance with applicable Customs regulations. A Customs officer in the field believes that Customs has authority to refund internal revenue taxes as drawback only under regulations pertaining to 19 U.S.C. 1313(d), which provides for drawback on medicinal and toilet preparations manufactured with tax-paid domestic alcohol and domes-

[1] Published in the CUSTOMS BULLETIN as C.S.D. 79-92.

tic distilled spirits and wines which are produced especially for export. The Customs officer believes that in the situation covered by the referenced legal determination any refund of taxes must be obtained from the Internal Revenue Service in accordance with section 5062(b) of the Internal Revenue Code (26 U.S.C. 5062(b)).

Law and analysis.—Section 1313(a), United States Code, provides for the refund of duties, less 1 percent, upon the exportation of articles manufactured or produced in the United States with the use of imported merchandise, and section 1313(b) provides for the same refund on imported merchandise for which same kind and quality domestic merchandise is substituted on manufacture. Section 101.1(i), Customs Regulations (19 CFR 101.1(i)) defines "Duties" as Customs duties and any internal revenue taxes which attach upon importation.

It is therefore evident that internal revenue taxes can be paid as drawback, under appropriate Customs Regulations, for any operation which meets the standards of 19 U.S.C. 1313(a), or 1313(b).

Title 19, United States Code, section 1313(d), provides for drawback for domestic distilled spirits which are used for specific manufacturing purposes or are produced under special regulations solely for exportation. The applicable Customs Regulations are set out in sections 22.22 through 22.26, Customs Regulations. However, this law and these regulations cannot be interpreted to mean that drawback may be obtained from the Customs Service on tax-paid spirits solely under that law, precluding payment of drawback under 1313 (a) and (b) on imported tax- and duty-paid spirits.

Section 5062(b), title 26, United States Code, is the IRS counterpart to 19 U.S.C. 1313(d), and likewise is not exclusive.

Holding.—Internal revenue taxes may be refunded by the Customs Service pursuant to 19 U.S.C. 1313 (a) and (b) for imported distilled spirits which are exported after reduction in proof in the United States, provided there is compliance with the applicable regulations.

(C.S.D. 79–474)

Classification: Horizontal Situation Indicator and Attitude Indicator; Country-of-Origin Marking

Date: June 20, 1979
File: MAR 2–08 R:E:E
709754 JB

This ruling concerns the country-of-origin marking and tariff classification of a horizontal situation indicator and an attitude indicator, articles which are used as navigational aids in aircraft.

Issue.—Are the horizontal situation indicator and the attitude indicator classified under item 712.49, Tariff Schedules of the United States (TSUS) and thus subject to specific methods of origin marking or are the articles classified under items 685.60 or 710.46, TSUS, whereby the attachment of tags indicating the country of origin may suffice?

Facts.—The horizontal situation indicator and the attitude indicator are navigational aids. The horizontal situation indicator provides information as to heading, track deviation, bearing, and distance. The attitude indicator presents information on an aircraft's inclination about its axes expressed as pitch and roll. Readings are the result of the electronic conversion of synchro signals.

Classification of the merchandise under item 712.49, TSUS, requires country-of-origin marking in accordance with 19 CFR 134.43(a), providing that such instruments be legibly and conspicuously marked by die stamping, cast-in-the-mold lettering, etching, engraving, or by means of metal plates which bear the prescribed marking securely attached by welding, screws, or rivets. The importer states that such origin marking would prevent the instruments from performing properly and contends that the appropriate classification is either item 685.60, TSUS, as radio navigational aid apparatus, or item 710.46, TSUS, as navigational instruments; goods classified under items 685.60 or 710.46, TSUS, are not subject to origin marking in accordance with 19 CFR 134.43(a).

Law and analysis.—The horizontal situation indicator and attitude indicator are not radio navigational instruments. Headnote 1(vi), part 5, schedule 6, TSUS, excludes electrical instruments and apparatus provided for in schedule 7. Classification of the merchandise under item 685.60, TSUS, is therefore precluded.

The horizontal situation indicator and the attitude indicator are also precluded from classification under item 710.46, TSUS. Headnote 1(v), subpart C, part 2, schedule 7, TSUS, which includes item 710.46, TSUS, in its coverage, provides that subpart C does not cover electrical measuring, checking, or analyzing instruments and apparatus.

The horizontal situation indicator and the attitude indicator are, in our opinion, properly classifiable as electrical measuring and checking instruments and apparatus under item 712.49, TSUS, dutiable at the rate of 10 percent ad valorem.

As noted, merchandise classified under item 712.49, TSUS, is required to be marked in accordance with 19 CFR 134.43(a); origin marking by means of the attachment of tags under 19 CFR 134.44(c) is not an acceptable method of marking of the indicators.

The importer cites reasons that affixing a metal plate with origin marking to the instruments would adversely affect hermetic sealing, and that welding or die stamping would cause the instruments to exceed the allowable tolerance for proper fit into the cockpit panel. Such methods of origin marking may not be possible for the units under consideration in their condition as imported. However, the instruments bear other markings such as "course," "heading," "miles," etc. Consequently, it is possible for the country of origin to be marked on such instruments in accordance with 19 CFR 134.43(a).

Holding.—The horizontal situation indicator and the attitude indicator are classifiable as electrical measuring and checking instruments and apparatus under item 712.49, TSUS, dutiable at the rate of 10 percent ad valorem. As articles classified under item 712.49, TSUS, must be marked in accordance with the specific requirements of 19 CFR 143.34(a), such instruments are to be marked legibly and conspicuously by die stamping, cast-in-the-mold lettering, etching (acid or electrolytic), engraving, or by means of metal plates which bear the prescribed origin marking and which are securely attached to the article in a conspicuous place by welding, screws, or rivets.

The district director of Customs may consider an exception to the country-of-origin marking of the present shipment under 19 U.S.C. 1304(a)(3)(K), for articles which cannot be marked after importation except at an expense which would be economically prohibitive. Future shipments, however, must conform to the provisions of 19 CFR 134.43(a).

(C.S.D. 79–475)

Temporary Importation Under Bond: Men's Suits Imported With Primary Object of Taking Orders and Secondary Object of Promoting Sales; Item 864.20

Date: June 20, 1979
File: CON–9–07–R:CD:D JB 209468

Issue.—Whether men's suits imported for display in Canadian Government offices with the primary object of taking orders for such merchandise, but with a secondary purpose of promoting the sales of Canadian products in the United States, are eligible to be classified as samples under item 864.20, TSUS.

Facts.—The office where the suits were to be displayed is under the jurisdiction of the Ministry of Industry and Tourism, Government of Ontario, Canada. One of their functions is to provide marketing

Decisions of the United States Customs Court

Customs Decision

(C.D. 4828)

AMERICAN POWERAIL, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Electrical Apparatus

Court No. 77-2-00188

ELECTRICAL CONDUIT—POWER SOURCE FOR MACHINES—SEPARATE ENTITY—CHIEF USE

Powerails and accessories imported at Houston, Tex., from West Germany in 1976 and classified in liquidation under TSUS item 685.90 as modified by T.D. 68-9, the provision for apparatus to make, break, protect, or connect an electrical circuit, *Held*, not classifiable as parts of cranes under TSUS item 664.10 as modified

by T.D. 68–9 as claimed by the importer, notwithstanding improper classification of some of the imported items under the electrical apparatus provision, where the sole function of the powerail is to carry electric power to a machine (crane) from a stationary power source that furnishes energy to the machine and, as such, must be regarded as being *part* of the power source and not as *part* of the machine, *United States* v. *Janson Co.*, 16 Ct. Cust. Appls. 315, 320, T.D. 43075 (1928) cited, and no *prima facie* evidentiary showing has been made as to chief use of merchandise of the same class or kind as that imported.

[Dismissed.]

(Decided November 28, 1979)

Dabney, Garwood & Holland (*David C. Holland* at the trial and on the brief) for the plaintiff.

Alice Daniel, Acting Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, Field Office for Customs Litigation (*Madeline B. Kuflik* at the trial and on the brief), for the defendant.

RICHARDSON, Judge: The merchandise at bar, described as accessories for Powerails, was exported from West Germany in December 1975, and classified in liquidation upon entry at Houston, Tex., under the provision in TSUS item 685.90 as modified by TD.. 68–9 for "other electrical apparatus for making or breaking electrical circuits, for the protection of electrical circuits, or for making connections to or in electrical circuits" at the duty rate of 8.5 *per centum ad valorem*. Plaintiff claims that the merchandise should be classified under the provision for parts of cranes in TSUS item 664.10 as modified by T.D. 68–9 at the duty rate of 5 *per centum ad valorem*.

The individual articles comprising the importation, as reflected on the invoice, consist of Powerail, end feed, line feed, end cap, sliding hanger, suspension bolt, collector, towing arm, and connecting pin. Erich Schneider, plaintiff's executive vice president who is in charge of buying, importing, marketing, and shipping of the product, and the sole witness in the case, described the importation as being a system "which supports a movable trolley which brings the current from an outside source from a terminal box to the crane, to the movable part of the crane. It therefore makes it movable." (r. 13) The witness stated that the imported product is "insulated and also completely enclosed." (r. 17)

The record shows that the Powerail is a polyvinyl chloride boxlike housing in lengths of approximately 6 to 12 feet which supports a maximum of five copper rails or conductors internally embedded in its sides and top to which electricity is introduced by means of an end feed or a line feed, as the case may be, connected to a stationary power source. The electrical current is transferred from the conductors to an internally mounted and movable collector trolley in constant contact

with the conductors by means of spring-loaded brushes positioned in the trolley body. And from the trolley the current passes to an electrically powered overhead crane motor by means of a cable connection suspended at the Powerail from an arm of the sliding or rolling trolley which protrudes from a small aperture along the entire base of the Powerail. The Powerail is mounted in juxtaposition to the crane beam although not supported by the crane beam itself.

The record further shows that of 1 million linear feet of Powerail sold by plaintiff in the United States, approximately 1,800 linear footage, or less than 0.2 percent, has been used in applications other than overhead cranes. However, descriptive literature authored by plaintiff (exhibit A) and distributed to its customers and potential customers, indicates that the Powerail can also be used for safe, mobile, power feeding of hoists, monorail systems, electric power tools, textile machines, machine tools, production lines, studio and station lighting systems, and many other applications. Moreover, the witness Schneider testified that there are other manufacturers in the United States of electrical systems that can be used for the same purposes as the Powerail, and that the plaintiff does not import or manufacture cranes.

At the conclusion of the trial, defendant moved to dismiss the action for failure on the part of plaintiff to establish a *prima facie* case. Decision was reserved by the court on the motion. And briefs were subsequently filed by the parties.

In its brief plaintiff argues that the Powerail is not includable under item 865.90 because, under the doctrine of *ejusdem generis*, the Powerail is not sufficiently similar to the articles specifically described in the provision to be included as apparatus for making or breaking electrical circuits. Plaintiff further argues that the chief use of the Powerail is as "part" of overhead cranes.

Defendant argues in its brief that the imported merchandise is specifically provided for in item 685.90. Defendant further argues that plaintiff has failed to establish that articles *of the same class or kind* as the imported merchandise were used as *parts* of cranes in the United States at or immediately prior to the date of importation.

Although the case was tried and briefed on the theory that the imported merchandise constitutes an electrical system, it is clear from the invoice before the court that the merchandise was imported as individual articles and not as a system *per se* (there is no question but that the ultimate use of the imported articles is in an electrical system). Inasmuch as imported merchandise must be classified in the condition in which it is imported, and not in a condition which reflects subsequent usage, *The American Import Co.* v. *United States*, 26 Cust. Ct. 361, Abs. 55248 (1951), it is apparent to the court that a number

of the individual articles before the court were inappropriately grouped as part of an electrical system for classification purposes under circumstances which required preservation of their individuality for such purposes. See and compare *J. E. Bernard & Co., Inc.* v. *United States*, 59 Cust. Ct. 31, 36, C.D. 3060 (1967), treating a "valve clip used for retaining the tube in the receptacle" as a *support* article rather than as an electrical device.

Such is the case with respect to the nonelectric items of the importation, i.e., sliding hangers (referred to by the witness Schneider as steel stiffner clamps (TSUS item 657.20), suspension bolts (TSUS item 646.54) and towing arms (TSUS item 657.20), all of which are shown in exhibit 2 or in exhibit A. The same is true with respect to the nonelectric end caps of polyvinyl chloride composition, more appropriately classifiable, it would appear, as electric insulators of plastic under TSUS item 773.30. Item 685.90, under which these nonelectric articles were classified, does not address itself to electrical systems as such. The provision covers specific electrical devices and components and parts thereof which are identified either by *eo nomine* designation or in terms of electrical function.

The remaining articles of the importation, namely, end feed, line feed, Powerail, copper connecting pins, and collectors, would appear to the court to readily respond to the tariff language "electrical apparatus for making * * * connections to or in electrical circuits" in item 685.90, except that, in the case of *insulated conductors*, such as the evidence shows the Powerail itself to be, Congress has shown a predilection for providing separately therefor under either TSUS item 688.04 or TSUS item 688.06, depending upon the weight of the copper content. In this respect, Congress seems to have elected to follow the format of the Brussels Nomenclature. See "Explanatory Notes to the Brussels Nomenclature (1955)," volume III, heading 85.19, page 961, heading 85.23, pages 968–969.

Although the court's view of the nature of the importations at bar tends to place it at odds with the resulting classification of the merchandise, at least in some respects, the view the court takes of the case makes it unnecessary for the court to resolve the case on the basis of the classification rendered. It is well settled that in a Customs classification case the plaintiff must not only prove that the classification is wrong, the plaintiff must also prove that its claimed classification is correct. *United States* v. *New York Merchandise Co., Inc.*, 58 CCPA 53, C.A.D. 1004, 435 F. 2d 1315 (1970).

Applying this principle to the facts of this case, it is clear that defendant's motion must be granted as a matter of law. First, in the court's opinion, the Powerail and its accessories are no more a "part" of an overhead crane as claimed by plaintiff than a third rail in a

subway system is "part" of the train. The Powerail, being wholly external to the crane, is nothing more than an electrical bridge between a stationary power source and an overhead traveling crane which utilizes its power to perform the motions of hoisting, trolley traversing, and bridging, which functions, the court is informed, may well be powered by hand, electricity, air, hydraulics, or a combination of these. See Baumeister & Marks, "Standard Handbook for Mechanical Engineers" (7th ed. 1967), section 10, page 37. Since electric power is not indispensable to the operation of an overhead crane, it follows that by no stretch of the imagination can it properly be said that the Powerail, whose only function is to carry electric power, is a part of the crane. *Cf. Ralph C. Coxhead Corp.* v. *United States*, 22 CCPA 96, T.D. 47080 (1934).

But even if electric power were indispensable to the operation of an overhead crane, the Powerail can only be regarded as being part of a separate entity, namely, the stationary power source, which *supplies* energy to a machine, and not as part of the machine that *receives* the energy. *United States* v. *Janson Co.*, 16 Ct. Cust. Appls. 315, 320, T.D. 43075 (1928). See also *Japan Import Co.* v. *United States*, 72 Treas. Dec. 490, T.D. 49224 (1937). Plaintiff's argument to the contrary simply fails to distinguish between an article whose presence is essential to *completion* of a crane and an article whose presence would be essential to *operation* of a crane. The Powerail, falling in the latter category, would comprise no part of a crane, and the court so holds.

Second, even assuming the Powerail to be "part" of an overhead crane, the question then arising from plaintiff's evidence would be whether such use has been shown to be the *chief use* of the part. And here, too, plaintiff's case must be found wanting as a matter of law.

Although the witness Schneider testified with respect to sales of the imported product in the United States, plaintiff presented no evidence relative to uses of other merchandise of this kind, notwithstanding the fact that the witness virtually conceded the existence of other merchandise of the same class or kind as that imported. Moreover, in its amended complaint [P7] plaintiff admitted that the Powerail was designed for "the utilization of electric current to transport mechanical *devices* along a restrictive path (overhead traveling cranes)" [italic added]—a posture which has been amply corroborated by evidence of a plurality of uses for the imported devices that plaintiff itself placed in the record in the form of a patent (exhibit 3). Thus, in view of the requirements of general interpretative rule 10(e) (i), TSUS,[1] the con-

[1] General interpretative rule 10(e) (i), TSUS, states: "A tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of articles of that class or kind to which the imported articles belong, and the controlling use is the chief use, i.e., the use which exceeds all other uses (if any) combined."

clusion is inescapable that plaintiff has failed to establish *prima facie* the chief use of the class or kind of merchandise to which the imported merchandise belongs. See *Hawaiian Motor Company* v. *United States*, 82 Cust. Ct.—, C.D. 4790, 473 F. Supp. 787, decided March 8, 1979 (*appeal pending*), and *United States* v. *Baltimore & Ohio R.R. Co. a/c United China & Glass Co.*, 47 CCPA 1, C.A.D. 719 (1959).

For the reasons stated, defendant's motion to dismiss is granted, without, however, affirming the classification of the merchandise.

Judgement will be entered herein accordingly.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *December 3, 1979.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

ROBERT E. CHASEN,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P79/211	Rao, J. November 27, 1979	Iberia Lineas de Espana	76-9-02035	Item 694.40 5%	Item 804.10 Assessment of duty limited to $19,774.94 which is the sum of drawback and T.I.B. duties	Agreed statement of facts	Boston Douglas DC-10-30 aircraft
P79/212	Watson, J. November 28, 1979	World Famous Sales Co.	76-8-01797	Item 389.60 25¢ per lb. + 15%	Item 735.20 10%	The Newman Importing Co., Inc. v. U.S. (C.D. 4648)	New York Nylon backpacking tents

P79/213	Maletz, J. November 28, 1979	Shayne Knitwear, Inc.	77-5-00856	Item 382.58 37.5¢ per lb. + 20% (blouses and pants) Item 772.30 12.5% (jackets)	Item 772.30 12.5% Dutiable as entireties on basis of export value; said value is invoice unit price	J. C. Penney Purchasing Corporation v. U.S. (C.D. 4671)	New York Ladies 3-piece suits entireties
P79/214	Boe, J. November 28, 1979	New York Merchandise Co., Inc.	77-10-04007	Item 544.51 26.5%	Item 688.40 9%	The Englishtown Corporation v. U.S. (C.A.D. 1187)	San Diego Travel light make-up mirrors
P79/215	Re, C. J. November 29, 1979	Sudco International Corp.	75-11-03006	Item 705.35 15%	Item 735.05 7.5%	David E. Porter v. U.S. (C.D. 4641)	Los Angeles Motorcross Gloves
P79/216	Maletz, J. November 29, 1979	Montgomery Ward & Co.	76-12-02020, etc.	Item 737.90 17.5%	Item 734.20 5.5%	Mego Corp. v. U.S. (C.A.D. 1137)	New York "Pachinko" game machines
P79/217	Re, C.J. November 30, 1979	Gelmart Industries, Inc.	78-3-00171	Item 705.35 15%	Item 734.97 Free of duty	Stonewall Trading Co. v. U.S. (C.D. 4023)	New York Ski gloves, mittens, etc.; products of eligible beneficiary country entitled to GSP treatment
P79/218	Rao, J. November 30, 1979	Bernard Chaus, Inc.	78-12-02278	Item 382.58 20%+37.5¢ per lb. Merchandise assessed with excessive duties	Item 382.58 20%+37.5¢ per lb. Merchandise incorrectly assessed with duties in that $1496.50 in excess duties was assessed through a clerical error in the rate extension	Agreed statement of facts	New York Women's wearing apparel

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P79/219	Richardson J. November 30, 1979	Alltransport, Inc.	74-11-03162, etc.	Item 708.89 22.5%	Item 707.80 15%	Wild Heerbrugg Instruments, Inc. v. U.S. (C.D. 4767)	New York Microscopy phototubes
P79/220	Richardson, J. November 30, 1979	Wild Heerbrugg Instrument, Inc.	74-11-03069, etc.	Item 708.89 22.5%	Item 708.80 15%	Wild Heerbrugg Instruments, Inc. v. U.S. (C.D. 4767)	New York Microscopy phototubes
P79/221	Maletz, J. November 30, 1979	The May Department Stores Co.	75-12-03312, etc.	Item 737.80 22%	Item 725.50 8%	Amico, Inc. v. U.S. (C.A.D. 1214)	New York Acrylic music boxes with dancers; lucite piano with dancers, etc.
P79/222	Maletz, J. November 30, 1979	Albert E. Price, Inc.	74-11-03274	Item 737.80 22%	Item 725.50 8%	Amico, Inc. v. U.S. (C.A.D. 1214)	Philadelphia Lucite bird cage music boxes, etc.

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R79/247	Watson, J. November 27, 1979	YKK Zipper Co., Inc., Yoshida Int'l. Inc.	72-11-02395	Constructed value	Equal to invoiced unit prices plus 8.5%, net, packed	Agreed statement of facts	Los Angeles; Dallas Zippers and/or zipper parts, classified under item 745.70, 745.72 or 745.74
R79/248	Rao, J. November 28, 1979	Yoshida Int'l. Inc., et al.	73-1-00334, etc.	Constructed value	Equal to invoiced unit prices plus 8.5%, net, packed	Agreed statement of facts	New York; Los Angeles Zippers and/or zipper parts, classified under item 745.70, 745.72 or 745.7
R79/249	Watson, J. November 28, 1979	YKK Zipper (Calif.), Inc., et al.	72-12-02615, etc.	Constructed value	Equal to invoiced unit prices plus 8.5%, net, packed	Agreed statement of facts	Los Angeles Zippers and/or zipper parts classified under item 745.70, 745.72 or 745.7
R79/250	Watson, J. November 28, 1979	Yoshida International, Inc.	72-9-01965	Constructed value	Equal to invoiced unit prices plus 8.5%, net, packed	Agreed statement of facts	New York; Los Angeles; Dallas Zippers and/or zipper parts, classified under item 745.70, 745.72 or 745.74

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

R. E. CHASEN,
Commissioner of Customs.

(303–TA–12)

PIG IRON FROM BRAZIL

Notice of Investigation and Hearing

Having received advice from the Department of the Treasury on November 20, 1979, that bounties or grants are being paid with respect to pig iron imported from Brazil, entered duty free under item 607.15 of the Tariff Schedules of the United States, the U.S. International Trade Commission, on December 3, 1979, instituted investigation No. 303–TA–12 under section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) (the countervailing duty law), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Conduct of the investigation under the Trade Agreements Act of 1979.—Under the countervailing duty law, the Commission is required to notify the Treasury Department of its determination in this investigation not later than 3 months after receiving Treasury's advice, in this case not later than February 20, 1980. However, the countervailing duty law has been amended in part and supplemented in part by sections 101–103 of the Trade Agreements Act of 1979 (Public Law 96–39, 93 Stat. 144, July 26, 1979). Section 101 of the act establishes a new title VII of the Tariff Act (sec. 701, et seq.; 19 U.S.C. 1671, et seq.) providing new (supplemental) countervailing duty provisions. Section 102 treats with investigations pending as of the effective date of the new title VII provisions (January 1, 1980, assuming that certain conditions set forth in secs. 2 and 107 of the Trade Agreements Act are fulfilled as of that date). Section 103 amends the present law (sec.

303 of the Tariff Act) in several specific respects to take into account new title VII of the Tariff Act.

Assuming that the new law becomes effective on January 1, 1980, the Commission will be required, under section 102 of the Trade Agreements Act, to terminate this investigation, institute a new investigation under subtitle A of title VII of the Tariff Act, and complete the new investigation within 75 days after January 1. On the assumption that the new law will become effective on January 1, 1980, the procedures described below will be followed in the present investigation.

Hearing.—A public hearing in connection with the investigation will be held on Wednesday, February 6, 1980, in the Commission's hearing room, U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436, beginning at 10 a.m., e.s.t. Requests to appear at the public hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m., e.s.t.), January 30, 1980. (If it appears that the new countervailing duty provisions will not become effective on January 1, 1980, a notice rescheduling the hearing (and related prehearing report and statements) for an earlier date will be issued.)

Prehearing statements.—The Commission will prepare and place on the record by January 16, 1980, a staff report containing preliminary findings of fact. Parties to the investigation should submit to the Commission a prehearing statement not later than January 29, 1980. The content of such statement should include the following:

(a) Exceptions, if any, to the preliminary findings of fact contained in the staff report;

(b) Any additional or proposed alternative findings of fact;

(c) Proposed conclusions of law;

(d) Any other information and arguments which a party believes relevant to the Commission's determination in this investigation; and

(e) A proposed determination for adoption by the Commission.

Collection and confidentiality of information.—Requests for confidential treatment of information submitted to the Commission should be directed to the attention of the Secretary. Requests must conform to the requirements of section 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6).

Information submitted to or gathered by the Commission in conjunction with this proceeding under present section 303 of the Tariff Act will be subject to the new countervailing duty law provisions regarding access to information set forth in new title VII of the Tariff Act after January 1, 1980, if that law becomes effective. Those provisions relate to the collection and retention of information by the Commission and the maintenance of confidentiality or the disclosure of information. The provisions of section 777 of title VII will require the following:

(a) A record of all ex parte meetings between interested parties or persons providing factual information in connection with an investigation and the Commissioners, their staffs, or any person charged with making a final recommendation in an investigation;

(b) Disclosure of nonconfidential information or nonconfidential summaries of confidential information which is not in a form that can be associated with or used to identify the operations of a particular person;

(c) Preventing disclosure of confidential information unless the party submitting the information consents to the disclosure; and

(d) Limited disclosure of certain confidential information under protective order or by an order of the U.S. Customs Court.

Section 516A of the Tariff Act, as added by the Trade Agreements Act, will require all information in the record before the Commission in the title VII investigation, whether confidential or nonconfidential, to become part of the record before the Customs Court in any review of a Commission determination. Section 771 provides definitions applicable to title VII.

These procedures are set forth pursuant to section 335 of the Tariff Act, which authorizes the Commission to adopt such reasonable procedures as are necessary to carry out its functions and duties.

By order of the Commission.

Issued: December 4, 1979.

KENNETH R. MASON,
Secretary.

In the Matter of CERTAIN ROTATABLE PHOTOGRAPH AND CARD DISPLAY UNITS, AND COMPONENTS THEREOF	Investigation No. 337–TA–74

Notice of Change of Commission Investigative Attorney

Louis S. Mastriani is designated Commission Investigative Attorney for investigation No. 337–TA–74, "Certain Rotatable Photograph and Card Display Units, and Components Thereof," replacing Charles F. Schill. The service of all papers on the Commission Investigative Attorney should henceforth be served upon Mr. Mastriani, effective Monday, December 3, 1979.

The Secretary is requested to publish this notice in the Federal Register.

Dated: December 3, 1979.

EARL LEVY,
Deputy Director, Office of Legal Services.

Index

U.S. Customs Service

Customs Court

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U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

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